



Guidance for Online Video Mediation September 2016

Preamble

Generally, family mediation is likely to be most effective when people speak face to face and in person. However, there are occasions when people cannot or decide not to come together in the same place to mediate. Using an online video connection is an option that can increase the availability of family mediation for these participants. ***This guidance note on the use of online video mediation should be read in conjunction with the Family Mediation Council's Code of Practice for Family Mediation.***

1. Agreement to mediate online

It is essential that all participants confirm their agreement in writing to the terms of an Agreement to Mediate specifically adapted for online video mediation (NOTE: See Appendix 1 below).

2. Agreement to maintain confidentiality

To protect the confidentiality of the mediation process, it is important that everyone agrees that:

- a. They will not create any electronic, video or audio record of the mediation;
- b. They will not make or allow any live or deferred video or audio relay of the mediation to others;

- c. Only the participants to the mediation and those who have signed the agreement to mediate will be present in the room used by each participant during any mediation session.

Reference should be made to data protection legislation and confidentiality policies where appropriate.

It is advisable for mediators offering online mediation to consider whether and, if so, how to offer the participants the right to enforce and protect the confidentiality of the mediation process for example, by including appropriate provisions in the mediation agreement.

3. Assessing suitability

It is expected that mediators will develop their own criteria for suitability for use of online mediation with their participants.

Consultation and training with mediators who are experienced in using online video is a useful way to develop assessment skills and tools.

Assessment checklists should be prepared by mediators offering mediation via an online video connection. These checklists should be refined in the light of experience and feedback from participants.

It is the mediator's responsibility to uphold throughout the principles of voluntary participation, fairness and safety.

4. Arrangements for online mediation

It is helpful to consider the following issues with the participants:

- a. Where the participants will be during the online mediation session. Will both participants be remote from the mediator? If one participant is with the

mediator in the same room and the other is remote, how might this impact on the mediation process and what should be done to address any impact? Many consider it difficult to maintain appropriate balance if one participant is with the mediator in person and the other is remote, participating via online video.

- b. How to ensure that participants are not interrupted during the online mediation session. It is helpful to set out arrangement in writing in advance and also to outline a contingency plan in the event of unforeseen circumstances.
- c. How to ensure that participants turn off or put to silent any devices like phones, tablets or computers, and disable alerts announcements or notifications of texts, emails, tweets or other social media activity; and close down any application other than the one providing the online video service. Participants may find it harder to maintain their focus through the mediation when they are participating via online video rather than when in a room with a mediator.
- d. Whether and how the mediator may suspend the online mediation session in the event of any interruption, and then restart the mediation.
- e. The mediator's procedure for dealing with lost connection, poor audio or video quality or other interruptions. It is useful to explain such procedures to the participants on several occasions and to confirm them in writing.
- f. How to check the suitability of the space in which each participant is sitting during the online mediation session and, in particular, what is visible to the other participant. Conducting intake or screening meetings via online video can be a useful way to make these checks.
- g. How the mediator might assist the participants to set up for the online mediation session; for example by adjusting the height of the chair, desk or table in relation to the camera, arranging the lighting on the person's face, changing the participant's distance from the camera and the possible use of headsets.

- h. How to use other tools like screen sharing, multiple screens, sharing of documentation etc. in a confidential and safe way. Mediators should seek training in use of the technology and practice with the tools. Access to professional technical support is also valuable.

5. Security and Data Protection

In England and Wales the Data Protection Act 1998 (DPA) imposes responsibility for data protection on mediation services and on individual mediators, particularly consultant/self-employed mediators.

6. Technical Issues

It is advisable that mediators:

- a. Control the arrangements for online mediation sessions, including securely initiating and terminating connections. It is important that the mediator contact the participants to begin the session and not the other way around.
- b. Terminate online sessions in the event of inadequate technical quality or breach of the terms of the Agreement to Mediate.
- c. Take responsibility for determining the adequacy of audio and video quality and whether or not the online environment is of sufficient technical quality to proceed.

Appendix 1 - Suggested terms to be added to an Agreement to Mediate

Terms for Mediators

- a. We will not audio or video record any mediation session, and nor will you. We will check with you that neither you, nor anyone on your behalf, will do so.
- b. We may terminate online video mediation if there is inadequate quality of connection or a breach of this agreement may have occurred.
- c. We may suspend the mediation if there is any remote interruption and will restart the online session once satisfied that any interruption has been resolved and that it remains appropriate to continue following such interruption.

Terms for Participants

- a. Only the people who have signed this agreement to mediate online may be present in the same rooms used by the participants during any online video mediation session. You will confirm that you are not able to be overheard from your location.
- b. You agree to do all you can to ensure that you are not interrupted during online video mediation by anyone else such as children, relatives, pets, deliveries.
- c. You agree to turn off or put to silent any phones, tablets or computers, and disable any alerts announcements or notifications of texts, emails, tweets or other social media activity, and close all or any other open application.
- d. You agree to there being no live or deferred video or audio relay of the online mediation to third participants.
- e. You agree not to video or audio record any online session.
- f. You assign all intellectual property rights in the online video mediation sessions to the mediator.
- g. If you create any video or audio recording of the online mediation, inadvertently or otherwise, you undertake to destroy any such recording as soon as you become aware of its existence.
- h. Online video family mediation is a without prejudice process to seek a negotiated settlement.

Appendix 2 – Guidance on Equipment & Connection (as at September 2016)

NOTE: It is acknowledged that technology is changing rapidly and this specification may quickly become out of date.

Minimum recommended specifications for hardware and software (mediators and participants):

- The latest version of the chosen webcam software for your device (most software will be supported to 2 major releases prior to the current one)
- A high-speed broadband connection (see below)
- High-quality or HD webcam
- Microphone and speakers (built-in or external headset with microphone)
- A desktop/laptop with a 2 GHz dual core processor or greater
- The latest version of Microsoft Internet Explorer, Mozilla Firefox, Google Chrome or Safari

Minimum suggested broadband connection:

- Minimum download speed 2Mbps / Minimum upload speed 1Mbps