



PARTY WALL MEDIATION SCHEME

Party Wall Mediation Scheme : Mediation Online

Introduction

Mediation has traditionally been conducted face-to-face at a neutral venue where three rooms are available, one room for each party and a joint session room. A physical meeting between the mediator and the parties will often be the best approach to mediation, but it is not always essential. Even before the Covid-19 crisis some mediations were conducted remotely, either using online technology or, in simple cases, by telephone.

During the coronavirus pandemic and the implementation of government lockdown restrictions face-to-face mediations were not be possible. Mediations continued to take place however online. Views as to the efficacy of online mediations differ with experience. The immediacy of physical meeting is lost, and for that reason there is a natural resistance to online mediations from many quarters. There will be occasions where it is important that the mediator is able to undertake a physical inspection of the site of the works. Nevertheless, the available technology does enable an effective mediation to take place remotely. Indeed there are advantages with mediation online. The cost of a venue is avoided, as is the time taken to travel to the venue.

Once you have chosen a mediator both the mediator and the parties may discuss how the mediation hearing should be conducted and which technology to use. This will usually be Zoom, but the parties may agree to use Microsoft Teams. Both these technologies offer the ability for the mediator to have private confidential meetings with either party, or individual parties may have private confidential meetings with their adviser (if they have one), in a virtual 'breakout room'. Not only can the parties be at separate locations, any adviser either party may have will be able to give help and advice from an entirely different location, and do so confidentially in a breakout room.

Zoom technology

Hardware required

Zoom will operate on any device, a personal computer, a tablet or even an iPhone, any device that will work with a broadband signal. It is advisable to have a good size screen.

Setting up Zoom meetings

The mediator will set up both the mediation hearing meeting and the preliminary meeting, assuming that one is held. In each case the mediator will send you an email incorporating a link. All any participant need do is download the Zoom software, which is free (you do not have to purchase the upgrade), and then click on the link. This will take you to a 'waiting area' from where you will be admitted to the meeting by the mediator. You can download the Zoom software at <https://zoom.us/download>

Before the meeting

After being engaged to act in the mediation, the mediator will contact each party to discuss what information needs to be provided by each party in advance of the mediation hearing and the date by which this information should be delivered. Where one or both parties have advisers the mediator will involve them in a 'preliminary meeting', usually by way of a three-way zoom meeting. This will be an opportunity for both parties and any advisers to ensure that all the documents and statements which they wish to be available at the mediation hearing are exchanged in good time for the hearing.

It will also be advisable for the mediator to contact everyone who will be at the mediation hearing who does not attend the preliminary meeting to ensure that each participant can be joined to the meeting on their respective devices, and to enable the mediator to effect an introduction and ensure that each participant is familiarised with the Zoom technology. For this purpose the mediator will have to be given both the email address of every participant at the mediation hearing and also a telephone number to be used in case of any difficulty.

Participants at the mediation hearing meeting

Zoom technology allows there to be multiple participants at any meeting, and it is possible for there to be attendees at the meeting who do not actually participate in the meeting. But it is important to remember both that mediations are confidential and that every additional participant or attendee may make the meeting more difficult for the mediator to manage. Please restrict participants or attendees to those persons who do need to attend. Any participant or attendee must agree to maintain completely confidential not only all the discussions held during the mediation hearing meeting but also the mediation generally. The mediator will ask all participants and any attendee to sign a confidentiality agreement.

Security at the mediation hearing meeting

The meeting is controlled by the mediator to ensure that it remains private. Only participants who have been previously approved by the mediator will be allowed into the meeting. An approved participant clicks on the link provided and enters the 'waiting area'. The mediator will be aware who is in the waiting area and will allow approved participants into the meeting. Anyone who gains entry to the waiting area who is not approved will not be allowed into the meeting.

Should an approved participant leave the meeting at any time during the mediation hearing, whether voluntarily or as a result of a technological problem, the participant may return to the waiting room by using the original link and the mediator will be able to admit the participant to the meeting.

Zoom technology offers facilities both to record the meeting and for participants to engage in written chat alongside the oral hearing. Both these facilities will be disabled. The mediation agreement prohibits recording the hearing in any form, and use of the chat facility may result in unguarded comments being published. Should a party to the mediation hearing and an adviser need to have private discussion outside a breakout room this can take place by a separate channel of communication, eg WhatsApp, text, or other social media medium.

The mediation hearing meeting

Each approved participant clicks on the link provided by the mediator and enters a 'waiting area' from which the mediator will admit the participant to the appropriate party's breakout room. This will enable each side to hold private discussions. One of the matters that may be agreed at the preliminary hearing is for each party to be given a set amount of time to discuss things in a breakout room before the official start of the mediation hearing.

Once the official start time is reached, and all approved participants have joined the waiting area, the mediator will begin the hearing. The procedure to be adopted will have been agreed at the preliminary meeting, and may differ in individual cases.

In the usual case the mediator will bring all participants together into the meeting room at the start of the meeting, effect introductions and run through the basics of how the meeting will proceed. There may then be a joint session covering the essence of the dispute, or, more likely, the mediator will put all participants into their respective breakout rooms and proceed to hold private discussions with each party in turn before moving to a joint session.

Breakout rooms

A breakout room enables parties to hold confidential meetings, private not only from the other party but also from the mediator. Only those participants who have been admitted to the breakout room may be in that room, and participants will be able to see a list of everyone present in their breakout room.

The mediator will be able to enter a party's breakout room, but before doing so will give a virtual 'knock on the door' either by sending a text message to the adviser or party, or if this does not receive a response, by warning the participants of his entry so that he does not overhear any private discussion.

Participants in the breakout room may contact the mediator either by using the "Ask for help" facility or by text or phone call to the number the mediator will have provided.

In the course of the mediation hearing additional breakout rooms may be created, for example to enable the parties to talk to each other without advisers, or advisers to talk to each other without parties, and in either event with or without the mediator.

Any queries?

Questions as to the procedure to be followed at either the preliminary meeting or mediation hearing should be raised with the mediator in advance. Should you wish to familiarise yourself with Zoom technology, please try one of Zoom's videos explaining how the technology works, at <https://zoom.us/resources>