



NINESTJOHNSTREET

MEDIATION

Reflecting on what has worked, and what hasn't, is essential part of my practice as a mediator. Here are my reflections on my recent experiences of mediating remotely.

Do remote mediations work? From those that I've conducted over these last few weeks, the answer is undoubtedly "yes", but as anyone who has mediated remotely in recent weeks will know, remote mediations are harder for all the participants than a "traditional" mediation would be.

As a mediator (and as an advocate) I always promote the benefits of mediation. Mediation gives the parties control over the shape of the outcome, something which they don't have when they put their case before a judge. And it allows them control over the time taken to get a resolution, a factor which is likely to assume even more importance given the present uncertainty as to how and when the Courts are going to be able to start handling trials and final hearings again.

Although it can never be a true replacement for a "face to face" mediation, a remote mediation is definitely better than not having a mediation at all, so long as everyone can participate in them with reasonable ease and access to the necessary technology. But although they can, and do, and will work to allow parties to take the opportunity that mediation affords them during this unsettling time, the feedback that I have received is that remote mediations are not (and perhaps can't be) a real replacement for a face to face meeting.

That is because mediations are, after all, about the parties' relationships, often in the context of the death of someone who they all loved or cared for, or their interaction with the neighbour that they see on the other side of the garden fence, day in and day out.

And they're about the parties' ability to engage with the mediation process. That's not just feeling that they're able to tell their story and that it is being listened to, acknowledged and understood, something which we can and do still do on-line. But it is also about them knowing that when they're upset and frustrated and overwhelmed by what is going on, someone is physically there with them to offer them support, and that's hard to achieve when they're sitting in the isolation of their own home and we're all just faces on a screen.

So, along with making time in my preparations to 'Zoom' the legal representatives and to liaise to make sure that we will all have what we need for the day to be effective, my key "learning point" from these first few weeks is that we all need to pay particular attention to the individuals involved, and to think about how they are going to cope with an already stressful experience made all that more difficult because they're in isolation and, ultimately, on their own.

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