

Independent Mediators Limited

Online Mediation Survey Results July 2020

T +44 (0)20 7127 9223

E imoffice@independentmediators.co.uk

W www.independentmediators.co.uk

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The fallout from the Covid-19 lockdown for mediation has been a cancellation of traditional person to person mediations, and a switch to virtual mediation via a number of platforms. Since lockdown in March this year all our mediators have been mediating online.

It has been fortunate that mediation has been able to continue during this period. Particularly when considering that a frequently expressed view of what the future 'after Covid-19' holds for the legal profession is "a tsunami of litigation." With disputes arising out of disruption to business, commercial contracts, building projects and collapsed companies. The Courts are bracing themselves for the expected case load and in a recent meeting on the 7th April at the British Institute of International and Comparative Law, Lord Phillips, former President of the Supreme Court, said "*parties should consider mediation, and conciliation should be encouraged at an early stage of legal proceedings*". Similar sentiments were echoed by Lord Neuberger on the Today programme on the 27th April, encouraging parties to mediate rather than wait for the courts to reopen.

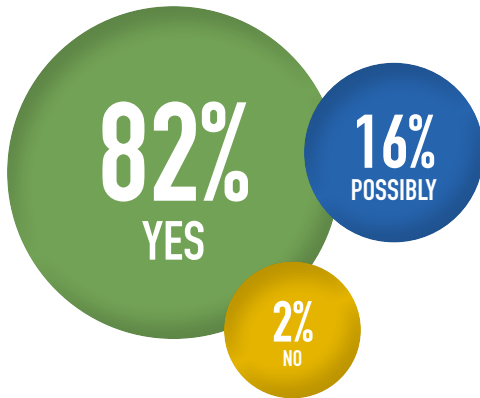
In May/June this year we undertook a survey of the people who use our mediation services to discover what they thought about online mediation. The survey was conducted on an anonymous basis using an internet-based questionnaire.

We asked the following questions:

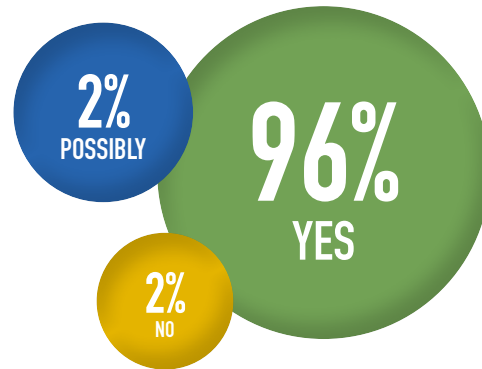
- Q1** If you have not yet taken part in an online mediation, would you be prepared to do so?
- Q2** If you have already taken part in an online mediation, would you do so again?
- Q3** Whether or not you have already taken part in an online mediation, would you do so if you also had the choice of a physically in person mediation?
- Q4** Would you take part in an online mediation where some attendees were physically together, while others attended online?
- Q5** What are your main concerns, if any, about mediating online?
- Q6** If you have already taken part in an online mediation, what do you regard as the main advantages?
- Q7** If you are currently not planning to mediate in person, but may choose to do so at some suitable stage in the future, what considerations would you take into account in reaching that decision?
- Q8** Would you like to make any other comments about the use of online mediation?

The answers to these questions can be seen over the next few pages with conclusions at the end. The majority of respondents were solicitors / lawyers (85%) with the remainder being mediators/negotiators.

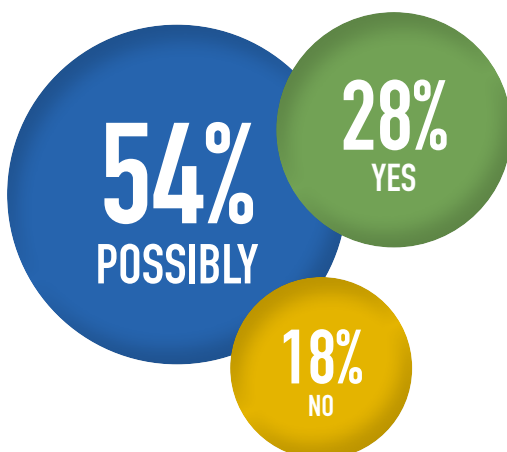
Q1 If you have not yet taken part in an online mediation, would you be prepared to do so?



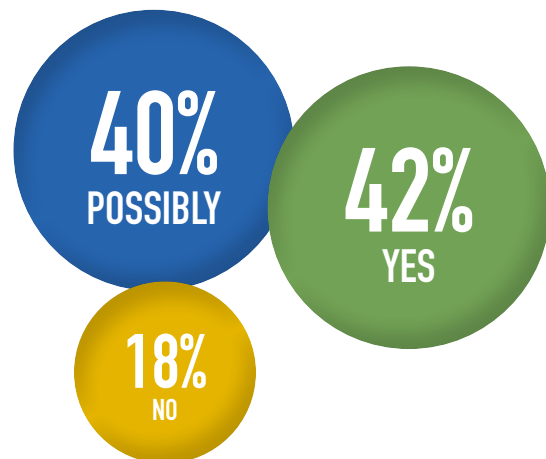
Q2 If you have already taken part in an online mediation, would you do so again?



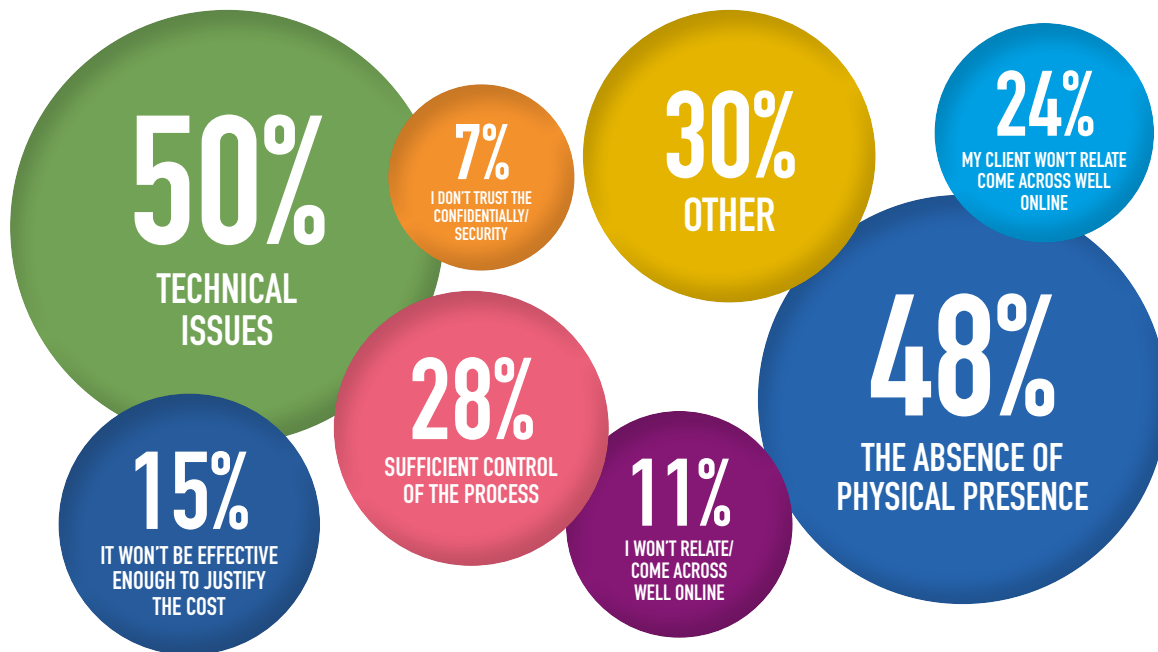
Q3 Whether or not you have already taken part in an online mediation, would you do so if you also had the choice of a physically in person mediation?



Q4 Would you take part in an online mediation where some attendees were physically together, while others attended online?

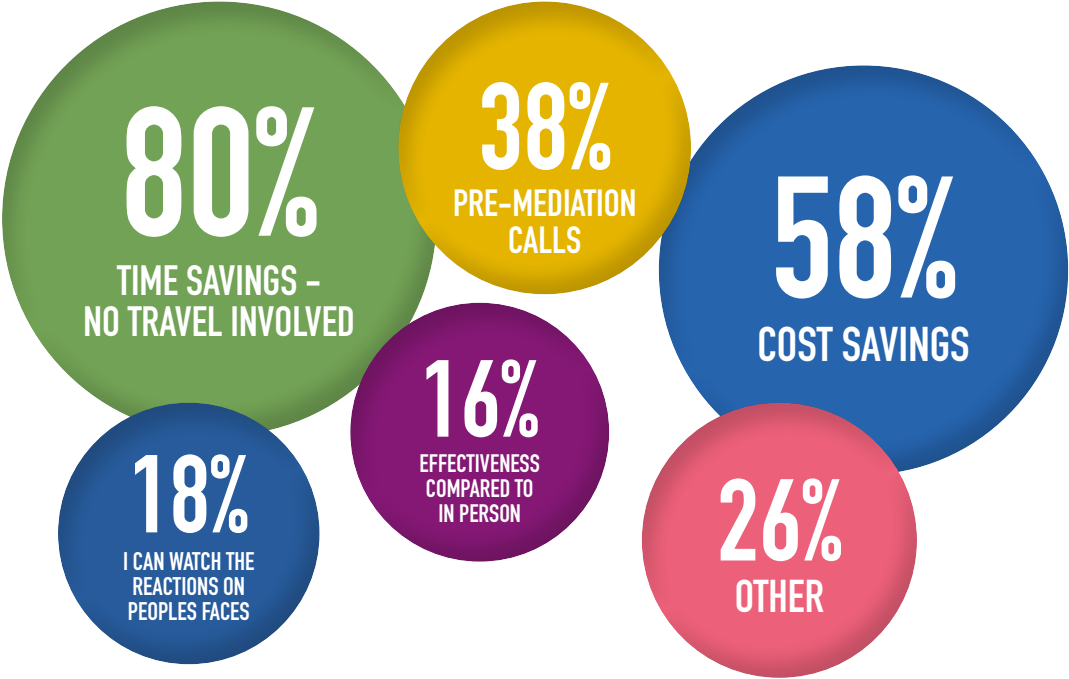


Q5 What are your main concerns, if any, about mediating online?
 (Respondents were able to select more than one option)



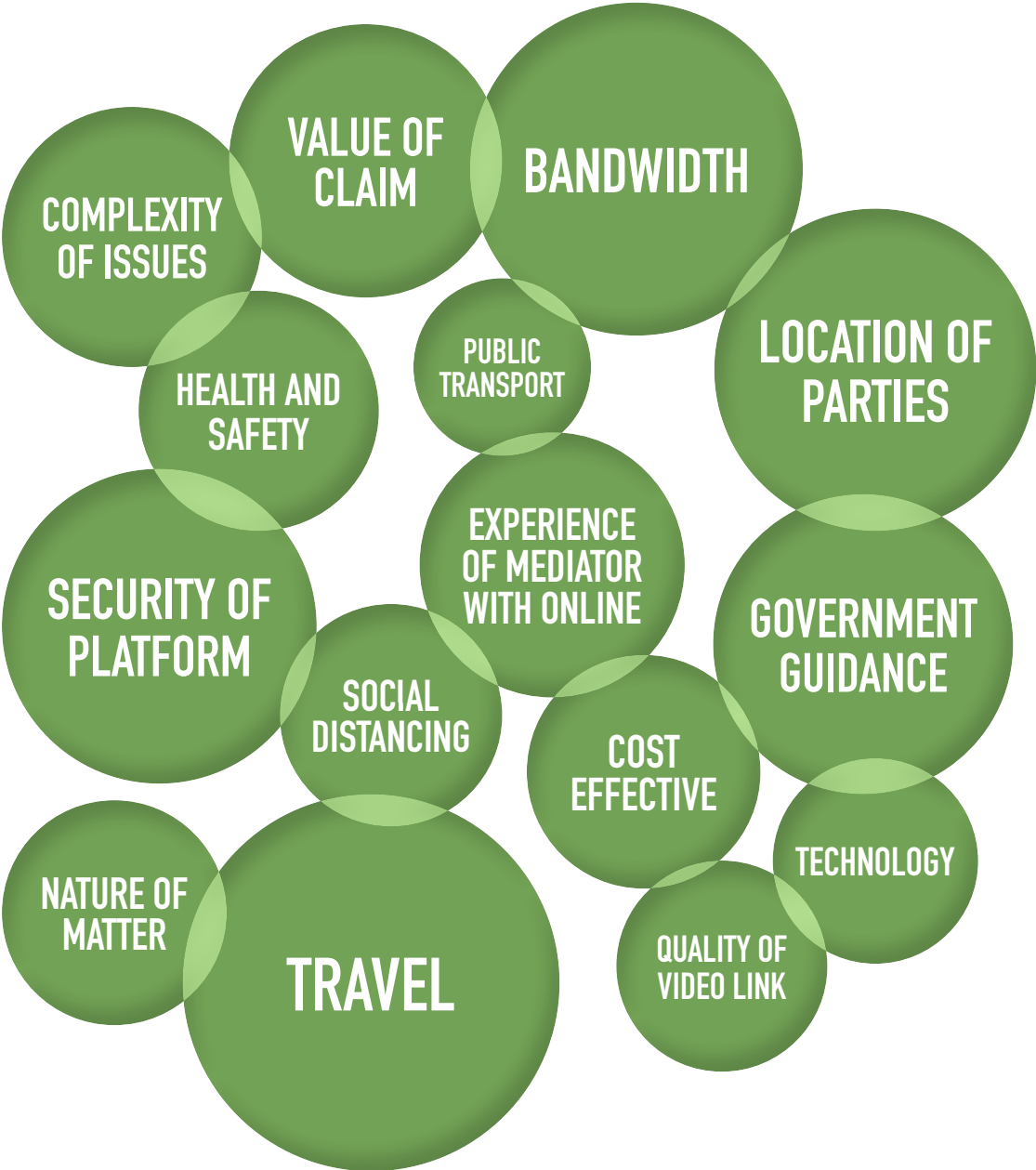
● Technical issues - e.g. delays, loss of signal, etc - will detract too much from the substance of the discussions.	50.36%
● The absence of physical presence will diminish the force of my arguments/views.	48.18%
● Other (please specify).	29.93%
● I may not have sufficient control of the process/my client.	27.74%
● My client won't relate/come across well online.	24.09%
● Overall, it won't be effective enough to justify the cost.	14.60%
● I won't relate/come across well online.	10.95%
● I don't trust the confidentiality/security of the platform.	6.57%

06 If you have already taken part in an online mediation, what do you regard as the main advantages?
 (Respondents were able to select more than one option)



● Time savings - no travel involved.	79.45%
● Cost savings - I can do other things when not engaged online.	57.53%
● Pre-mediation calls were more effective by zoom than by phone.	38.36%
● Other (please specify).	26.03%
● I can watch the reactions on people's faces more easily.	17.81%
● No loss of effectiveness compared to in person mediation.	16.44%

Q7 If you are currently not planning to mediate in person, but may choose to do so at some suitable stage in the future, what considerations would you take into account in reaching that decision?
(This was an open-ended question where respondents could provide their own observations)



Q8 Would you like to make any other comments about the use of online mediation?

(This was an open-ended question where respondents could provide their own observations)

Please see below for responses received.

It can defuse a tense mediation and put parties more at their ease.

I was impressed with the effectiveness of online mediation, and would be happy to consider it in future even where face-to-face mediation is available.

Keen to see progress of online and electronic working, as well as saving paper!

Let's try to resist the urge to characterise anything as a panacea. Online isn't the perfect solution but can be beneficial and efficient. Our eyes have been opened to expanding the tools available, so let's use new tools thoughtfully in the right way for each dispute.

Difficult to check and gauge reactions on the faces of all people in the room - as focus is on person speaking at one time.

It was too easy for one party to say we need to gather more information and so postpone rather than carry on negotiating a settlement. This lack of force of the mediation process was the major disadvantage.

It will allow much greater choice of mediators across geographical and cost barriers – using mediators from other jurisdictions will be potentially advantageous useful additional tool.

Parties need to be prepared in advance like Pre-Mediation before their online... to check their comfort, awareness and access to online Mediation process.

I've heard from colleagues it works really well and I envisage it may be here to stay as a more cost-effective option, beyond lockdown.

Useful just now and will be part of how I will mediate in future bit I am mindful that it will not replace mediation in person.

Amazing and the best possible alternative to offline mediation.

Its good and should be promoted.

It's a great supplementary tool.

Platform of course needs to be tried and tested to ensure it is secure (confidentiality wise) and quality of image and sound.

It may become the norm in the shorter term and even in the longer following Covid.

We have proposed online mediation in several matters - no one has declined it but there is a reluctance. There's also anecdotal feedback that it can make the day even longer.

I am open minded about online mediation - key concerns are the technology and communication channels.

Given that there have been a number that have already taken place and successfully, this may become more acceptable going forward.

Online Mediation was more intense than in person - ensuring adequate breaks perhaps more important than in person Mediation.

I am very much in favour of it.

It should remain as an option even post lock-down as for relatively low value disputes it is likely to be attractive.

Technology works much better than expected.

Conclusions

Whilst an overwhelming majority of those who have already taken part in online mediation said they would be prepared to do so again (over 90%) and an overwhelming majority of those who had not yet taken part in online mediation said they would be prepared to do so (over 80%) the results alter when asking if this would be the case should an in-person mediation be possible. In this instance the percentage who answered 'yes' falls to 26%, although just over 50% say 'possibly'.

Responses on whether a hybrid mediation (some attendees in person and some online) were mixed with just over 40% saying 'yes' and the same again 'possibly'.

The main concerns about mediating online were 'technical issues' with 'the absence of physical presence diminishing the force of my arguments/views' close behind. That technical issues are a concern is no surprise. Many people had never used online platforms and were overnight expected to be able to use these without the support of an IT department whilst working from home.

The main advantage of online mediation is listed as time saving as no travel involved. This was followed by cost savings. Next were pre-mediation calls being noted as more effective by Zoom than by phone.

Is online mediation here to stay?

(When we can meet again in person with limited or no restrictions)

We don't have a crystal ball but...looking at the survey results and feedback received separately to our office and mediators we would say yes but not for all cases. As for everything there is no one size fits all option. However, for smaller claim value, less complex matters then opinion seems to be yes.

Where parties are geographically dispersed whether in the UK or overseas then the cost and time savings in travel are a huge advantage and online mediation or a combination of online and in person is invaluable.

Online and Hybrid mediation (people both online and in person) are attractive for international mediations and allow mediators to be more accessible across jurisdictions.

Online mediation is a very valuable additional tool in the mediation toolbox, but it is an addition rather than a replacement for in person mediation.