



## #HardwickeBrew Your Keepcup

*These notes follow the #HardwickeBrew given on 7<sup>th</sup> May by PJ Kirby QC, John de Waal QC and Sarah McCann of Hardwicke, and Rahim Shamji of ADR ODR Int. They discussed online mediation, whether you can really ensure confidentiality in an online session and a host of other questions which they have come up against in past experiences. All the information below as correct as at 14<sup>th</sup> May 2020.*

### Mediation Brew – your takeaway cup

Just a few bullet points from our first in a series of #HardwickeBrew on Break the log jam with online ADR – Online mediation: practicalities and tips

Mediation remains just as important now as it has been – see the recent decisions in *DSN v Blackpool FC* [2020] EWHC 670 (QB), *BXB v Watch Tower and Bible Tract Society of Pennsylvania* [2020] EWHC 656 (QB) and how refusing mediation can be a costly mistake to make re indemnity costs.

Mediation therefore as necessary now as ever – cannot be put off until “this is all over” as we do not know when that will be and litigation is continuing in the meantime. In any event online mediation can be just as effective and often cheaper than a face to face mediation.

ADR-ODR (<http://www.adrodrinternational.com>) have extensive experience of online mediation and of training mediators. It is not enough to have a mediator who has had some experience of Zoom or whatever platform you are using. It is essential that the mediator knows the full functionality of the platform being used. It is essential that there are a number of secure rooms that are opened. One can often require as many as 10 rooms: - plenary room, claimant’s team, defendant’s team, claimant’s lawyers, defendant’s lawyers, lawyer’s only, counsel only, solicitors only, client’s only, drafting only. Every room must be secure preserving the essential confidentiality of the process. The rooms should be clearly labelled to avoid any confusion. ADR-ODR offer the service of a virtual case manager supervisor to mediators to organise the practicalities if that is of assistance.

# Hardwicke

There are some practical aspects of online mediation that apply equally to online court hearings. Make sure that you are familiar with the technicalities. As the lawyer you will probably need more than one screen in order to have the mediation bundle on a separate screen. Make sure your camera and mic is working. Position the camera so it is at eye level and not looking up your nose. On your 'team' you should consider whether to have other means of communication eg a Whatsapp group. Be aware during any plenary session of body language as it will be more obvious on a screen. Decide within your team what happens if someone's internet crashes. A day on Zoom is for many more tiring than a day in a face to face mediation although you may be able to break away more easily. Be aware that emotions can be expressed just as forcefully on line as in real life.

At the end of the mediation you have hopefully reached a deal which you will want to record in a settlement agreement. Decide beforehand how that will be done. Google Docs would enable you to share the document and work on it together. Consider having a separate drafting room just for those who are going to do the drafting plus possibly the mediator. Agree how the document will be signed – electronically or copies printed off and signed and scanned.