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# Love of Video Mediation in the Time of Covid-19: An Initial Insight into Benefits and Challenges

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## Abstract

Mediation's claim to legitimacy is based largely on its promise to integrate responsiveness to personal needs and values into the process of dispute resolution, offering "personalised justice" based on human needs. As face-to-face mediation sessions are not possible during the Covid-19 outbreak, mediation service providers are offering video mediation services. Before the onset of the pandemic, video mediation was used on a much smaller scale. Whilst this article highlights the benefits of video mediation it also identifies challenges that must be faced when seeking to incorporate video mediation as an integral part of service provision post-pandemic. It emphasises that if mediation is to continue to provide high quality personalised justice it is vital that practitioners, when considering the appropriate medium for each mediation, give thorough consideration to a wide range of factors. Such factors include parties' need to maintain or reduce distance (geographical and psychological), and the rise of a new form of vulnerability that hinders less IT literate persons' access to alternative dispute resolution mechanisms. The author includes references to her own personal experience of conducting video mediations in the United Kingdom (UK) and recommends the way forward for optimal integration of videoconferencing into mediation practice.

## I. Introduction

In the same way that court hearings have been conducted virtually as a result of the Covid-19 outbreak, mediators have also been offering online mediation sessions, using mainly video platform mediations. This article argues that although this shift was forced and sudden, it offers policy making and mediation practice an exceptional opportunity to reconsider service provision and find ways to integrate videoconferencing into mediation service provision post pandemic. However, the transition to video mediation, can only be capitalised upon if its impact on mediation's promise to provide access to "personalised" justice is explored.

This article examines mediation's ability to respond to a range of personal needs, interests and values which allows the process to extend beyond the examination of legal rights, and it provides initial insights into video mediation's potential to fulfill mediation's promise. It highlights the lack of attention paid to video mediation by policy makers and the need for research into video mediation's potentials to provide access to personalised justice. It also identifies some key benefits of video mediation and underlines the crucial importance for mediation parties to be comfortable in engaging with technology if they are to use videoconferencing for the process. This is because mediation requires parties to progressively deepen their dialogue and open up about personal needs and interests.

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The rise of a new form of vulnerability in mediation - digital exclusion, is also highlighted.<sup>1</sup> The article cautions that in order to take advantage of what video mediation has to offer, mediators must carefully weigh a combination of factors for each individual case.

## II. Background to Mediation: Personalised Justice as Mediation's Promise

Mediation is a key form of alternative dispute resolution (ADR), the primary form of dispute resolution in the common law world.<sup>2</sup> Mediation is practiced in various styles, however, mediators are most commonly trained in the facilitative model.<sup>3</sup> When facilitative mediation (hereinafter referred to as "mediation") is practiced appropriately, the mediator is an impartial third party who does not make suggestions, give legal advice, or exert pressure to reach a settlement. Rather, the mediator facilitates the parties' negotiation, helping them move beyond their stated financial and/or legal positions, exploring their underlying concerns, needs and interests.

Mediation is often described as an "art".<sup>4</sup> The artistic aspect of the mediator's practice captures the intangible, intuitive and unpredictable angle of their work.<sup>5</sup> A key to a successful mediation involves the mediator connecting with the parties on a deep and empathic level and skillfully guiding them through a powerful and challenging process of exploration, which, if successful, leads to parties' better understanding of their conflict. The selection of the right communication channel for mediation is crucial to make the most of what mediation offers.

Mediation's greatest promise is offering personalised or "individualised justice",<sup>6</sup> i.e. a form of justice that is responsive to the needs of the parties and what is fair to them, as opposed to the strictly regulated, bureaucratic court procedure that offers legalised justice, i.e. "justice according to the law".<sup>7</sup> Parties' experience of empowerment, self-determination and control over the outcome overarch the process of mediation. These have been found to induce parties' perceptions of procedural justice and better acceptance of the outcome.<sup>8</sup> This highlights the importance of party control over choice of the type of mediation and of the communication channel used in order to allow for the highest possible quality of personalised justice.

## III. Online Mediation and Where We Have Got To

Initially, mediation was conducted in in-person face-to-face sessions. With the development of the internet, however, online forms of mediation and ADR, i.e. online

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<sup>1</sup> JUSTICE, 'Preventing Digital Exclusion from Online Justice', April 2018, 4, <https://justice.org.uk/wp-content/uploads/2018/06/Preventing-Digital-Exclusion-from-Online-Justice.pdf>.

<sup>2</sup> Ethan Katsh and Orna Rabinovich-Einy, *Digital Justice: Technology and The Internet of Disputes*, (OUP, 2017), 44.

<sup>3</sup> Jonathan Dingle and John Septon, *Practical Mediation: A Guide for Mediators, Advisers, Lawyers, and Students* (Law Brief Publishing, 2017), 19.

<sup>4</sup> For example, Bennett D. Mark and Scott Hughes, *The Art of Mediation 2<sup>nd</sup>* (NITA: Notre Dame, IN, 2005), 3.

<sup>5</sup> Donald T. Saposnek, 'The Art of Family Mediation', (1995) 11(5) *Mediation Quarterly* 5.

<sup>6</sup> Carrie Menkel-Meadow, 'Practicing in the Interests of Justice in the Twenty-First Century: Pursuing Peace as Justice', (2001-2) 70 *Fordham Law Review* 1761, 1769.

<sup>7</sup> Richard Susskind, *Online Courts and the Future of Justice* (Oxford, UK: Oxford University Press, 2020), 72.

<sup>8</sup> Nancy A Welsh, 'Remembering the Role of Justice in Resolution: Insights from Procedural and Social Justice Theories', (2004) 54(1) *Journal of Legal Education* 52.

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dispute resolution (ODR), have developed. At first, ODR systems focused on handling disputes that arose in e-commerce using text-based communication methods online. However, the development of technology and the internet resulted in ODR's growing use to handle conflict in a wide variety of areas, and the use of more developed means, e.g. videoconferencing. Whilst the original idea was to "fit the forum to the fuss"<sup>9</sup>, ODR and online video mediation have been increasingly offered as a convenient "equivalent" to face-to-face mediation sessions. However, this article cautions that attributing disproportionate weight to convenience and/or blurring the distinction between face-to-face and online video services when advertising mediation may jeopardise the quality of personalised justice.

### ***a) Video mediation as access to justice during the pandemic***

Understandably, the coronavirus pandemic resulted in a surge of mediations conducted via videoconferencing as face-to-face encounters had become impossible. For example, whilst UK Mediation, a UK-based mediation service provider, generally conducts approximately 10% of their caseload using videoconferencing, due to the social distancing measures and lockdown they reported a threefold increase in their online video mediations.<sup>10</sup> Further, the Family Mediators Association, a membership organisation for family mediators in the UK, at the time of the lockdown transitioned to offering mediation information and assessment meetings (MIAM) and full mediations through videoconferencing.<sup>11</sup> This is an important prerequisite to maintaining access to justice for divorcing couples in two ways: (1) as section 10 of the Children and Families Act 2014 makes it compulsory for individuals to attend a MIAM before making an application to the court, MIAMs through videoconferencing maintain disputants' access to justice through the courts; (2) should the disputants be open to mediation they can get access to the process and therefore avoid litigation. In this sense, online video mediation allows mediators to remain "gate-openers"<sup>12</sup> to the justice system in the extraordinary times of the pandemic. However, this article highlights that, when life returns to "normal", it is essential that mediation service providers do not automatically revert to online mediation or simply return to face-to-face sessions but skillfully integrate videoconferencing into their practice.

### ***b) Transitioning from online to face-to-face and back: Why is this important now?***

There are at least three reasons why it is particularly timely to consider the transition between the different methods of mediation service provision. Firstly, the only way to benefit from the challenging forced shift to video mediation is if mediators pause, reflect and carefully redesign their service delivery, taking into account their own and their clients' lived experience of face-to-face mediation and its online counterpart. Their decisions need to be monitored and reconsidered in the light of the findings of empirical research that has yet to have been conducted.

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<sup>9</sup> Frank E. A. Sander and Stephen B. Goldberg, 'Fitting the Forum to the Fuss: A User-Friendly Guide to Selecting an ADR Procedure', (1994) 10 *Negotiation Journal*, 49.

<sup>10</sup> UK Mediation, 'Re:connect: The Online Mediation,' video, <https://ukmediation.net/mediation-services/reconnect-online-mediation-services/>, accessed 10 June 2020.

<sup>11</sup> Family Mediators Association, 'COVID-19 Update', <https://thefma.co.uk/>, accessed 29 April 2020.

<sup>12</sup> Lisa Parkinson, 'The Place of Mediation in the Family Justice System', (2013) 25 *Child & Family Law Quarterly*, 205.

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Secondly, finding ways to select the best communication channel for each mediation may become more important than ever as the side-effect of the range of preventative practices adopted to protect physical health are predicted to bring about severe economic recession and downturn in business and family relationships. Mediation, if used appropriately, can help repair these relationships. As in China the number of divorce claims rose significantly after over a month of stay-at-home measures,<sup>13</sup> similar increase can be expected in the Western world, because the combined impact of the isolation, the closure of schools, business uncertainties and layoffs which impose great strain on families. A growing number of commercial disputes seems inevitable, e.g. in the service economy due to cancellation of services to consumers, and in case of commercial contracts due to the unwillingness or inability of one party to fulfil its contractual obligations. Further, a survey that examined the six largest UK property management firms and reported that 25% of rents and 31% of service charges that were due for payment in March 2020 remained outstanding after 49 days,<sup>14</sup> foreshadows a growing number of disputes in the property market. Resolving these disputes will be vital for economic recovery and mediation could play a critical role in reinstating or healing these relationships leading to a greater and speedier economic recovery. This will require the selection of the optimal communication channel for each dispute, maximising mediation's potential to provide good quality justice.

Thirdly, during the pandemic, policy making has so far paid too little attention both to mediation and to whether it is conducted in-person or online. While design thinking based on empirical research is unfeasible in the current circumstances, this will become essential in a few months' time.

The Coronavirus Act (the Act) came into force on 25 March 2020, introducing new laws mainly in order to protect public health. Schedule 25, section 85 of the Act allows for court hearings to take place either using video or solely audio facilities and section 89 (1) of the Act stipulates that the Act will expire in 2 years' time. Whilst the Act does not mention ADR, it has implications for mediation due to mediation's embeddedness in civil procedures<sup>15</sup> as broadly defined.

Importantly, JUSTICE, a law reform and human rights organisation in the UK, in paragraph 27 of its briefing on the Coronavirus Bill argues that non in-person hearings are only appropriate for the emergency situation caused by the pandemic. It notes that at all times 'the presumption should be that hearings will be conducted in person'; videoconferencing should be used only when in-person hearings are unattainable and it is in the interest of justice that the hearing continues. JUSTICE also states that the emergency legislation should not be in place longer than the emergency itself,<sup>16</sup> which is estimated to be considerably shorter than 2 years. This paper posits that the presumption of face-to-face sessions would benefit also the mediation arena. Further, the identification of circumstances that establish the need for the use of video mediations is also necessary and this task should be carried out well before the expiration of the above mentioned 2-

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<sup>13</sup> Cristina Mesa Vieira, Oscar H. Franco, Carlos Gomez Restrepo and Thomas Abel T, 'COVID-19: The forgotten priorities of the pandemic,' (2020) 136 *Maturitas*, 40.

<sup>14</sup> 'COVID-19 Crisis: Minimal Rise in Collection Rates of Quarterly Rent and Service Charge Payments', Remit Consulting, 20 May 2020, <https://www.remitconsulting.com/blog>.

<sup>15</sup> For example, paragraph 8 of the (CPR) Practice Direction- Pre-Action Conduct and Protocols 2015.

<sup>16</sup> JUSTICE, 'Briefing on Coronavirus Bill', March 2020, paras. 6, 8(ii), <https://justice.org.uk/wp-content/uploads/2020/03/JUSTICE-briefing-Coronavirus-Bill.pdf>.

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year period, as soon as it is possible. This will facilitate a more consistent approach to mediation service provision and protect disputants' access to quality justice.

Whilst organisations that specialise in mediation service provision have provided their mediators with guidance on conducting video mediations and mediators have been exchanging their experiences using various platforms, in the legal arena mediation has received only brief coverage in protocols and guidelines issued on conducting dispute resolution procedures during the Covid-19 outbreak in the UK. For example, the comprehensive guide issued by Outer Temple Chambers to its members makes some technical recommendations and warns that client communication is more difficult to foster remotely. It goes on to argue that additional separate meetings need to be organised between counsel and the client before and after mediation.<sup>17</sup> However, whilst this is of great importance it is only a starting point to explore the differences between face-to-face and video mediation. Guidance issued by the courts is also limited. For example, the presidential guidance for the Employment Tribunals in England and Scotland makes only a fleeting reference to mediation stating only that judicial mediation may take place via either video or telephone conferencing.<sup>18</sup> The 'FAQ arising from the Covid-19 pandemic' document does not provide further details but makes telephone conferencing the primary tool for mediation.<sup>19</sup> As mediation practice draws on interdisciplinary perspectives including legal, psychological, and organisational considerations the guidance issued should reflect such interdisciplinarity and differences. This paper argues that for each practice area, e.g. family, commercial mediation, interdisciplinary expert panels comprising mediators and mediation specialists from various backgrounds should be involved when creating guidance on the choice of communication channel. A dialogue between experts from different disciplines would help balance various perspectives when considering the advantages and drawbacks of different communication channels for mediation.

#### **IV. Video Mediation: An Initial Consideration of Benefits and Challenges**

To date, little research is available that addresses specifically video mediation and its distinction from in-person face-to-face mediation. The literature most commonly addresses ODR as a whole with greater focus on text-based forms of online mediation. However, mediation via videoconferencing shares some of the advantages of other methods of ODR.

##### ***a) Why mediate using videoconferencing?***

Video mediation has a number of undisputable advantages. Whilst allowing parties to see each other, videoconferencing helps participants:

- ✓ take part in mediation from the safety and comfort of their homes;
- ✓ participate in mediation even if there is significant geographical distance between the parties and/or the mediator, or if parties live in remote areas;
- ✓ save time and money when accessing mediation.

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<sup>17</sup> 'The Virtual Conduct of Litigation during COVID-19', Outer Temple Chambers, 9 April 2020, <https://www.outertemple.com/2020/04/the-virtual-conduct-of-litigation-during-covid-19-2/>.

<sup>18</sup> Paragraph 13 of the 'Presidential Guidance in Connection with the Conduct of Employment Tribunal Hearings During the COVID-19 Pandemic', Presidents of Employment Tribunals (England and Scotland), 18 March 2020, <https://www.judiciary.uk/wp-content/uploads/2015/03/Presidential-Guidance-ET-Covid19.pdf>.

<sup>19</sup> Paragraph 8 of the 'FAQs Arising From the Covid-19 Pandemic', The Employment Tribunals in England and Wales and Scotland, Presidents of Employment Tribunals (England and Scotland), 3 April 2020.

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These commonly mentioned benefits of video mediation facilitate parties' access to personalised justice. In some of these cases video mediation is the only option, e.g. landlord-tenant disputes when the parties live in different continents, in others it helps all individuals meaningfully participate in the virtual mediation whose input is important. For example, young people may find interactions online more tolerable than sitting through a face-to-face mediation session in an unfamiliar and more impersonal environment. This highlights the potentials of online video mediation for example in the case of divorce, family conflict, and for mediation in the area of special educational needs and disabilities (SEND).<sup>20</sup>

Mediation via videoconferencing also helps with access to personalised justice when

- ✓ parties prefer to and/or it is in their best interest to maintain distance;
- ✓ due to reasons of security or safety a face-to-face encounter unfeasible.

Parties may prefer to maintain distance because individuals show different levels of tolerance to conflict. People that are conflict avoidant make every effort to prevent conflict and, if it exists, avoid it or disengage as quickly as possible, whilst others are more comfortable with conflictual interactions.<sup>21</sup> People that feel stronger than average anxiety about confronting the other party face-to-face may only be willing to mediate when the parties are physically separated. Physical separation often helps conflict avoidant individuals fully engage in a search for win-win solutions rather than avoiding the conflict or concede, making video mediation an excellent tool in enabling access to good quality personalised justice for these individuals. Further, individuals who are more able to tolerate conflictual interactions but are involved in a conflict characterised by power imbalance, may also feel calmer and safer when participating in video mediation, a benefit of text-based online mediation.<sup>22</sup>

In relation to facilitating safety, videoconferencing enables dialogue between parties when face-to-face communication is literally impossible, e.g. peace processes when it is not possible to meet due to security and safety concerns.<sup>23</sup>

### ***b) Face-to-face and online video mediation: Is there a difference?***

The instinctive assumption that video-based and face-to-face communication are largely the same poses a great threat to the quality of personalised justice offered in mediation. Mediators' and parties' better understanding of the differences and similarities of the two types of mediations are essential for choosing the optimal communication channel for the particular mediation. For example, parties to a conflict who would be open to face-to-face mediation may decide to opt for video mediation, if that is offered or recommended, as it is more convenient. However, this way they will lose out on the benefits that a "rich" in-person encounter offers compromising on the quality of justice. On the other hand, parties

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<sup>20</sup> Margaret Doyle, 'Going Online, in a Hurry', UK Administrative Justice Institute, 10 April 2020, <https://ukaji.org/2020/04/10/going-online-in-a-hurry/>.

<sup>21</sup> Bernard Mayer, *The Dynamics of Conflict Resolution: A Practitioner's Guide* (San Francisco, CA: Jossey-Bass, 2000), 30-32.

<sup>22</sup> Rebecca Brennan, 'Mismatch.com: Online Dispute Resolution and Divorce', (2011) 197(3) *Cardozo Journal of Conflict Resolution* 214-216.

<sup>23</sup> Melissa Conley Tyler and Susan R. Raines, 'The Human Face of On-line Dispute Resolution', (2006) 23(3) *Conflict Resolution Quarterly* 336.

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that are not willing or able to take part in mediation face-to-face, may lose access to personalised justice if video mediation is not offered or recommended.

Whether online and in-person, in order to conduct a successful mediation, the mediator needs to build confidence and have good process skills. As their main confidence-building characteristic, the mediator needs to relate to all, convey a sense of caring and have chemistry with both parties.<sup>24</sup> Further, an interview study on mediation parties' lived experience has revealed that mediation is perceived by parties primarily as a learning process in which the mediator skilfully works on building a bridge between the sides. Participants felt that this work requires the mediator's understanding of parties' personalities.<sup>25</sup> Face-to-face communication allows both the parties and the mediator to experience all aspects of verbal and non-verbal communication in all their richness. Therefore, having the parties in the room helps achieve an in-depth encounter, creating space for connection and learning. In my own experience with using videoconferencing for individual and joint mediation sessions successfully, encounter, connection and learning can be achieved, however, *understanding* which is at the core of personalised justice, comes less readily. Therefore, bridging the difference between the parties requires a little more work.

As for process-skills, both online and face-to-face, a successful mediator is patient but persistent and they should never quit.<sup>26</sup> An obvious and commonly addressed difference is the necessity that the mediator builds up confidence in the use of technology and supports parties if things go wrong. The guidelines issued by the International Council for Online Dispute Resolution that specifically address video mediation<sup>27</sup> are a useful source regarding the technological aspect of the process. However, other angles of process-skills require more attention including exploration through empirical research.

The process in video mediation is essentially the same as in-person. However, when mediating using video, holding preparatory individual sessions with both parties prior to the joint mediation session greatly helps build rapport and ease parties into virtual interactions. Therefore, this is good practice even when the mediator normally wouldn't choose to conduct an individual meeting with the parties. Further, whilst the mediator tools stay the same in video mediation, as mediators use well-crafted questions, active listening, and rewording techniques, in my own experience, mediators often need to check more with parties to what extent they have embraced all aspects of what has been said. This is to build dialogue, deal with strong emotions and/or help parties overcome resistance.

Another unexplored difference between face-to-face and video mediation is the impact of the different information received through the two channels on the human brain. As the working (short-term) memory has limited capacity the conscious activity of the brain is also limited.<sup>28</sup> The cognitive load on the brain increases with videoconferencing since several features of video-based communication consume conscious capacity. Further, whilst in

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<sup>24</sup> Stephen B. Goldberg and Margaret L. Shaw, 'The Secrets of Successful (and Unsuccessful) Mediators Continued: Studies Two and Three', (2007) 23 *Negotiation Journal* 398.

<sup>25</sup> Timea Tallodi, *How Parties Experience Mediation: An Interview Study on Relationship Changes in Workplace Mediation* (Switzerland: Springer, 2019), 246, 132.

<sup>26</sup> Goldberg and Shaw, 'The Secrets,' (n. 24) 398.

<sup>27</sup> 'ICODR Video Mediation Guidelines', The International Council for Online Dispute Resolution, April 2020, [www.icodr.org](http://www.icodr.org).

<sup>28</sup> Stewart Martin, 'Measuring Cognitive Load and Cognition: Metrics for Technology-Enhanced Learning,' (2015) 20(7-8) *Educational Research and Evaluation*, 592-598.



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face-to-face communication people process emotions unconsciously and rely on non-verbal cues to make emotional judgements,<sup>29</sup> in a video conversation people have to focus and make more effort to process non-verbal cues, and they are also exposed to long stretches of constant gaze. As the combined effect of all this, the brain has to work harder in videoconferencing, which makes video mediation more tiring than a face-to-face session. This needs to be considered when deciding on the length and frequency of mediation sessions that the mediator undertakes.

Overall, the most important challenge of the mediator is handling a different non-verbal communication in video mediation. The METTA model, which addresses movement, environment, touch, tone and appearance in the mediated conversation,<sup>30</sup> is a good tool to examine the non-verbal challenges of the mediator. For example, as for movement, whilst the mediator's whole body is not visible to the parties, it is important that the mediator sits upright and is positioned towards the computer, they occasionally nod and lean forward signaling active listening, and that they are neither too far from nor too close to the webcam.<sup>31</sup> The mediator also needs to work on maintaining eye-contact. This can be rather challenging as one needs to look directly into the webcam but at the same time this loses sight of the party's non-verbal cues; also, looking into the camera gives a somewhat artificial look. Eber and Thomson recommend to "drag" the video window displaying the party close to the webcam,<sup>32</sup> however, in my experience, on numerous devices and videoconferencing platforms this is not possible. Therefore, for many mediators real eye-contact is one of the most missed aspects of face-to-face mediation.

It is clear that if mediators study the differences between video-based and face-to-face mediation and take the necessary steps, they can conduct successful mediations via video. However, not being together in one room, the parties will also miss the sight and feeling of the other party's and mediator's whole body, not getting a clear picture of their body language and micro-signals. Therefore, the above individual factors need to be weighed when considering the optimal communication channel for mediation and, in particular, when the aim of mediation is to heal a particularly fractured relationship.

### ***c) Digital exclusion: A new type of vulnerability***

Access to justice is commonly associated with access to court and the initiatives to create a cheaper, faster and simpler legal procedure.<sup>33</sup> As an important aim of the ADR movement was to help these efforts by promoting cheap and fast alternative methods of dispute resolution, lack of access to justice in mediation was not a dominant concern. However, with the increase of online service provision mediators and ADR specialists need to consider digital exclusion which will become a core component of the changing concept of vulnerability.

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<sup>29</sup> Guido Gainotti, 'Unconscious Processing of Emotions and The Right Hemisphere,' (2012) 50(2) *Neuropsychologia* 208.

<sup>30</sup> Noam Ebner and Jeff Thomson, '@Face Value? Non-verbal Communication and Trust Building in Online Video Based Mediation', (2014) 1 *International Journal of Online Dispute Resolution* 110-111.

<sup>31</sup> *Ibid*, 120-121.

<sup>32</sup> *Ibid*, 122.

<sup>33</sup> Ethan Katsh and Orna Rabinovich-Einy, *Digital Justice: Tehcnology and the Internet of Dispute Resolution* (OUP: Oxford), 40.

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Digital exclusion, when defined broadly, includes individuals without access either to the internet or to a device, or the skills, ability, confidence or motivation to use it, and individuals who rely on digital assistance (i.e. assisted digital).<sup>34</sup> Overall, more than 11 million adults lack basic digital skills in the UK.<sup>35</sup> Further, in 2019 there were 4 million adults who had never used the internet. Whilst the age gap is reducing within this group, more than half (2.5 million) of these individuals were aged 75 years and over.<sup>36</sup> In 2019, 7% of households had no access to the internet in the UK.<sup>37</sup> Importantly, digital exclusion is the most common amongst otherwise vulnerable groups, including individuals that are older, unemployed, disabled, socially isolated, or are of lower educational background.<sup>38</sup>

Therefore, awareness of digital exclusion is indispensable when offering mediation services online as a complete transition to videoconferencing can deprive already disadvantaged groups of access to personalised justice. Considerations regarding the assisted digital group are vital because when participating in video mediation one needs to feel comfortable with video-based communication and technology in order to be able to become absorbed in the mediated dialogue.

## V. Conclusion

Previous research has left video mediation unexplored. However, the lockdown and social distancing measures due to Covid-19 provide mediators and researchers an exceptional opportunity to test and understand the use of video mediation and its potential to provide high quality personalised justice to disputants. The questions about video mediation no longer concern its viability, but rather the suitability of a particular dispute for video mediation. To this end, this article provides an initial insight into the process in which mediation provides personalised justice, which centres on parties' gradually deepening dialogue guided by the mediator, and the benefits and challenges of video mediation in this regard. The article argues that, when life gets back to the new normal, mediators must pause, reflect and reconsider their practice in order to be able to integrate videoconferencing into their service provision. Some key factors have been outlined that require consideration by the mediator and the disputants when choosing between in-person and video mediation. Making the right choice and mastering skills necessary for video mediation will allow mediators offer high quality justice via mediation.

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<sup>34</sup> JUSTICE, 'Preventing Digital Exclusion from Online Justice', April 2018, 4, <https://justice.org.uk/our-work/assisted-digital/>.

<sup>35</sup> *Ibid*, 4.

<sup>36</sup> 'Internet Users in the UK: 2019', Statistics from Office of National Statistics (ONS), May 2019, <https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2019>.

<sup>37</sup> 'Internet Access: Households and Individuals- Great Britain, 2019', Statistics from ONS, May 2019, <https://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/bulletins/internetaccesshouseholdsandindividuals/2019>.

<sup>38</sup> Ellen J. Helsper and Bianca C. Reisdorf, 'The Emergence of a "Digital Underclass" In Great Britain and Sweden: Changing Reasons for Digital Exclusion', (2016) *New Media and Society*, 27.