

VIRTUAL SETTLEMENT MEETINGS/MEDIATIONS

A SHORT GUIDE ON HOSTING THROUGH MICROSOFT TEAMS¹

Introduction

Owing to COVID-19, it seems likely that all settlement meetings or mediations in the foreseeable future will need to take place virtually. Our experience at Cloisters of trialling such settlement/mediation meetings on Microsoft Teams has been very positive, and we are confident this is a reliable method by which these can take place in many circumstances. Other tools are available and some offer similar functionality. It is likely that this guide can be adapted for use with different video conferencing tools (and for parties using different video conferencing systems for some of the meetings), but we have developed it using Microsoft Teams for all meetings.

This short step-by-step Guide is intended to walk practitioners through the process and technology. It is not intended to be prescriptive, but to illustrate some of the challenges the technology poses, with suggested solutions we have developed, and to offer a starting point that can be adapted to suit practitioners' preferences.

We advise practising using Teams before the settlement/mediation meeting itself, to avoid teething problems on the day. Other training and information resources are available²:

Practitioners are reminded that virtual settlement meetings and mediations, like other remote hearings, may not be suitable for all litigants. In particular, practitioners and representatives must be aware of and make accommodations and/or reasonable adjustments for individuals who are vulnerable, disabled or in other ways disadvantaged in the use of technology, including related to the availability and cost of connectivity. In the particular circumstances of the COVID-19 lockdown, all parties need to be aware that there are challenges relating to home working which may affect any of the participants, including childcare, for which provisions may be suggested and agreed in advance, where necessary.

Microsoft Teams

Microsoft Teams is available in various packages with different levels of functionality and cost. This includes downloadable free versions which probably provide sufficient functionality for legal representatives who only require use of Teams for a particular meeting(s) and do not wish to pay a Licence fee. It is not necessary to download Teams just to participate in a meeting; a participant (e.g. a lay client) can just click on a link sent by email and will be joined. To organise a meeting and send invitations, Teams must be downloaded.

¹ MS Teams is the new virtual meeting platform, developed by Microsoft to replace Skype4Business

² Visit <https://go.microsoft.com/fwlink/?linkid=2008318> to explore free training options.

Mediation Agreements

Where applicable, Mediation Agreements, including the Rules of Mediation, will need to be adapted to meet some of the pragmatic points set out below. Please review any such Agreements and Rules accordingly.

Participants and the CONTACT SHEET:

The details of the other participants attending the settlement/mediation meeting (including name, role, and contact details for the professional participants) will be collated (see *pro forma* contact sheet attached) prior to the settlement meeting. This sheet is called the 'CONTACT SHEET'.

We recognise that a contact arrangement is required that allows all participants the freedom to leave their meeting when not directly needed (and to be available in the real or virtual world for childcare, other domestic activities, or other clients), and to be easily and quickly recalled to their meeting when they are needed.

Methods must be proposed for rapid and reliable communication during the settlement mediation/meeting. A mobile phone number is likely the best option here (sending a text or WhatsApp message directly to a device usually kept on or near the person, with an audible notification setting), but a landline call could be used, or an email if the participant is sufficiently confident that they can assure responding within 5 minutes. Remember to leave audible notifications ON when not actually in attendance at the settlement/mediation meeting.

Nominate one member of each litigation team as TEAM LEADER. During the settlement meeting, this person should be the first point of contact for recalling participants to any meeting or communicating between parties generally.

Include the details for the professionals on the CONTACT SHEET. Lay clients should not include their personal contact details on the CONTACT SHEET but should be contacted directly by their representatives. Ensure you have agreement within your team about who will contact whom and when.

A representative for each party should sign the settlement/mediation meeting agreement, which will include a completed version of the CONTACT SHEET, before the meeting. This should also confirm that the representative has explained the implications of the agreement to their lay clients.

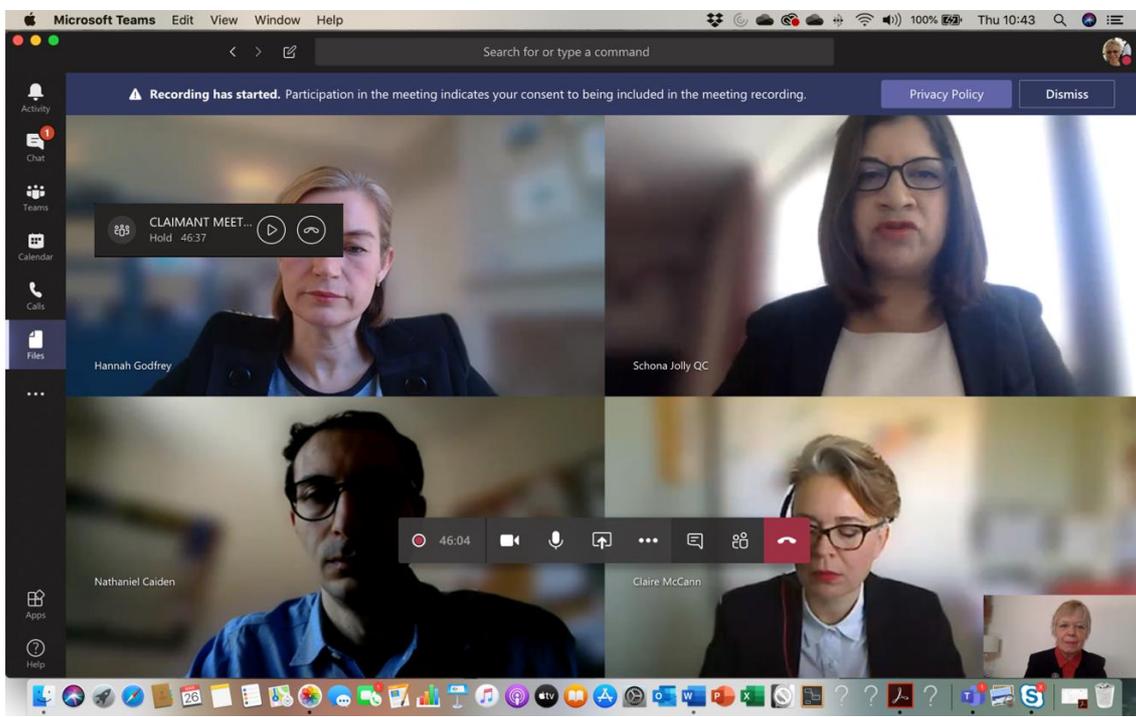
The structure of the settlement/mediation meeting:

There will be three virtual meeting 'rooms', hereafter 'meetings'. All three meetings will be scheduled at the same time. They will be labelled as follows:

1. CLAIMANT MEETING [Only the Claimant team, and a mediator if there is one].
2. DEFENDANT/RESPONDENT MEETING [Only the Defendant/Respondent team, and a mediator if there is one].
3. JOINT MEETING [all participants]

If you wish, you may include a fourth room ‘LEGAL REPS ONLY’ [only counsel and solicitors].

Using the right labels is important because the screens on MS Teams often show only the first word or two of a meeting title³, therefore always start with the key word you will need in order to recognise that meeting. The meetings, and those invited to each meeting, will be set out on the CONTACT SHEET, and agreed by reps in advance of the settlement meeting.



Screenshot No 1

Before the meeting:

The parties will agree who will be the ORGANISER(S) of the meeting. For mediations, the default position will be that the mediator should be the sole ORGANISER. In all settlement meetings without a mediator, two legal representatives (one from each party) will be the ORGANISERS. The ORGANISER(S) will secure agreement about the time and date for the meeting, the start and finish time and will send out the invitations and the blank CONTACT SHEET.

³ The full title is visible when the cursor is hovered over the name, but for certainty and ease of moving between meetings, we recommend a clear first word approach is taken.

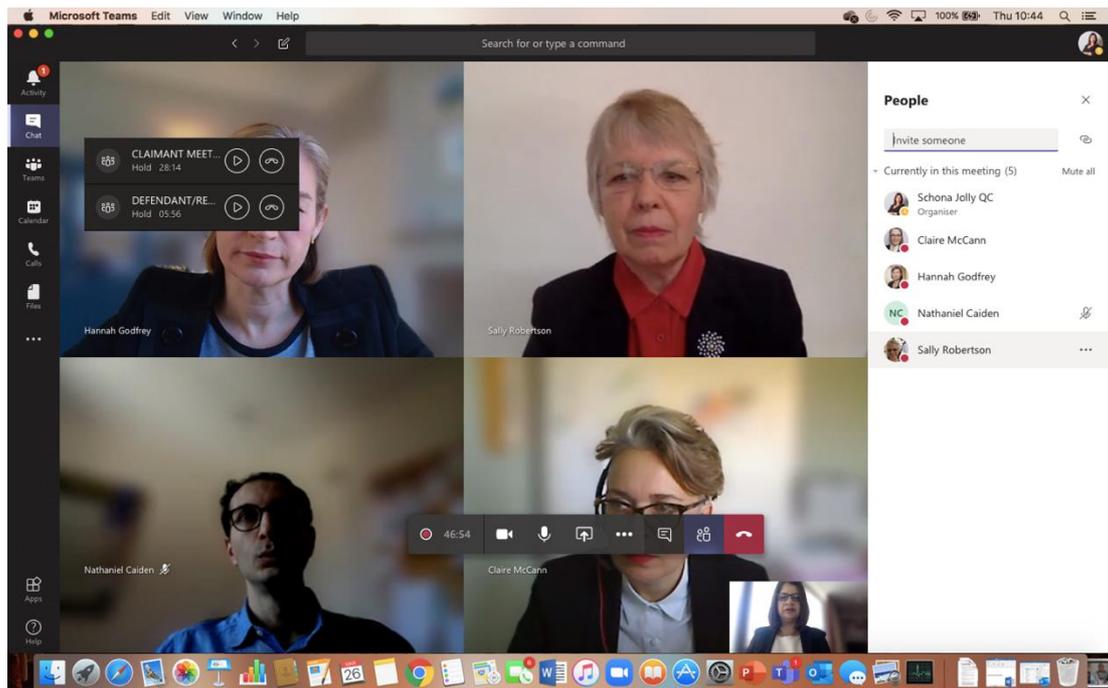
Each party will decide on their ‘team’ participants: those who will directly participate in the settlement/mediation meeting, and their ORGANISER (where there is no mediator) and TEAM LEADERS. The parties will fill in the CONTACT SHEET (see example CONTACT SHEET).

Setting up the meeting:

This will differ depending on whether a neutral third party (mediator) is involved in the settlement/mediation meeting process. Invitations are sent by email. These can be created directly from the Teams Calendar or from Outlook.

Where there is a mediator involved, they will act as sole ORGANISER and send the invitations. The participants for each party’s ‘team’ will be sent invitations to two of the meetings (their own meeting, and the joint meeting). The mediator will send invitations to, and join, all three meetings.

If you wish to, you may set up a fourth meeting room for counsel only, or legal reps only. That meeting room can be used flexibly, for meetings of all legal reps, or just counsel to counsel, or just solicitors to discuss e.g. payments on account of costs or drafting of settlement terms etc. Invitation to that room should be sent to all legal representatives (solicitor and counsel) but not to lay clients. If this option is preferred (as opposed to legal reps conducting such further discussions over the telephone for example), the mediator ORGANISER **should not** send an invitation to the fourth room, but this should be sent by either one of the legal representatives, as set out for the position below where there is no mediator.



Screenshot No 2

Where there is not a mediator involved, each ORGANISER sends the invitations to his/her own party meeting, and one of them (it does not matter which, but agree this) sends the invitations to the JOINT meeting.

Please accept **all** the invitations you are sent. Acceptance of the invitation will result in an appointment automatically being put in your calendar in Outlook.

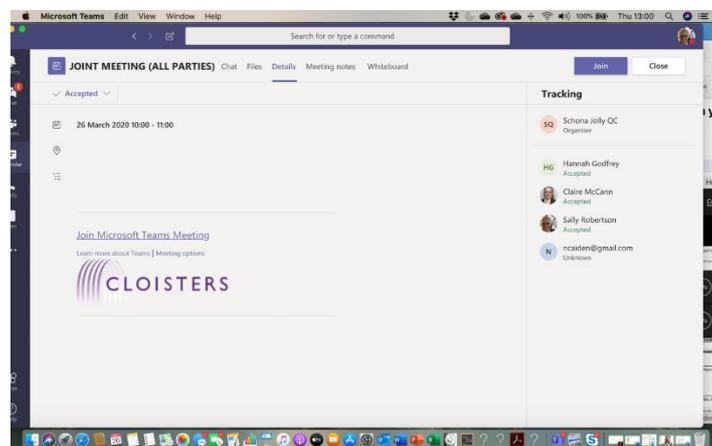
Joining the meeting:

The ORGANISER(S) will need to open all the meeting rooms, at the earliest time that they are likely to need to be used. The parties can agree with the ORGANISER to attend early and use their private room for a pre-mediation meeting. This must be arranged with the ORGANISER because (s)he will have to give permission for the participants to enter meetings from the virtual 'waiting lobby'.

It is sensible to attend your private (CLAIMANT ONLY/DEFENDANT ONLY) meeting room early enough to give your party time at least to settle into the virtual meeting experience and do a check that everything is functioning and back up communication means are working. If you have not had an opportunity for a pre-meet before the day, you can arrange to meet early enough to spend time advising your client in your party's private meeting room.

In any event, all participants must join the JOINT MEETING by the start time. If you join early, please just wait with your microphone muted until all parties are present. Participants unfamiliar with the technology would be well advised to try to connect at least 5 minutes before. We suggest every participant be directed to contact the ORGANISER(S) in the event of a difficulty with joining the meeting.

You can join any meeting to which you have been invited by clicking on the link, "Join Microsoft Teams Meeting" in the email or outlook calendar entry for that meeting. This will either take you into your MS Teams app (if you have this installed on your device) or to a web browser. This enables participants to join who have not downloaded the MS Teams app.



Screenshot No 3

Please establish within your own team, a protocol for who will speak/present in the JOINT MEETING and how any other participants will take part, and how. It is possible for participants to join as silent observers, turning off their video and/or audio. They will remain listed as a “participant” so that everyone in the meeting can know who is present and attending. It will be possible for members of the team not taking an active part in a discussion in the joint room to ‘listen in’ without being visible or audible. This is not an option in live (i.e. face-to-face) joint meetings, and so this offers lay clients an unusual ‘fly-on-the-wall’ opportunity to view settlement discussions between legal representatives without fear of being observed and giving away emotional responses to remarks or figures.

We suggest that a default presentation should be agreed, and that for the lay client this should be microphone off, camera on: a visible but silent observer (as they would be in court).

All participants will be listed in the ‘show participants’ side panel when they join any meeting. The same tool will also show the status of their camera/microphone in that meeting. All participants (including lay clients) must be able, at the least, to turn on their microphone and confirm that (1) they are attending, (2) can see/hear the meetings, and (3) are comfortable with the technology being used.

The settlement/mediation meeting:

Whatever use each party makes of their private meeting room before the JOINT MEETING, **all participants** invited to the settlement/mediation meeting must attend the first plenary session in the JOINT MEETING ROOM.

When all participants are present, the ORGANISER(S) will open the meeting. This will likely involve (but is adaptable to the ORGANISER’s preference) the following:

- taking a roll call of participants,
- checking that each participant is able to work their audio/video connections and is able to see/hear adequately,
- confirming all parties have signed and seen the mediation/settlement meeting agreement, and have a copy of the CONTACT SHEET,
- uploading the CONTACT SHEET to the JOINT MEETING conversation so that it is accessible to all participants if needed,
- uploading key part(s) of agreement to screen to help make sure lay clients understand, where applicable,
- taking any initial questions,
- setting a timetable for the day,
- making any introductory remarks,
- sharing any documents that have not already been shared.

When appropriate to do so – each party will move back to their own meeting rooms. This is done by clicking on the ‘resume’ (i.e. play) button of the meeting they wish to go to (see

screenshot 4 below) . As each participant does this, their attendance at the JOINT MEETING ROOM will be put on hold as it is not possible to be present in more than one meeting at a time on MS Teams.

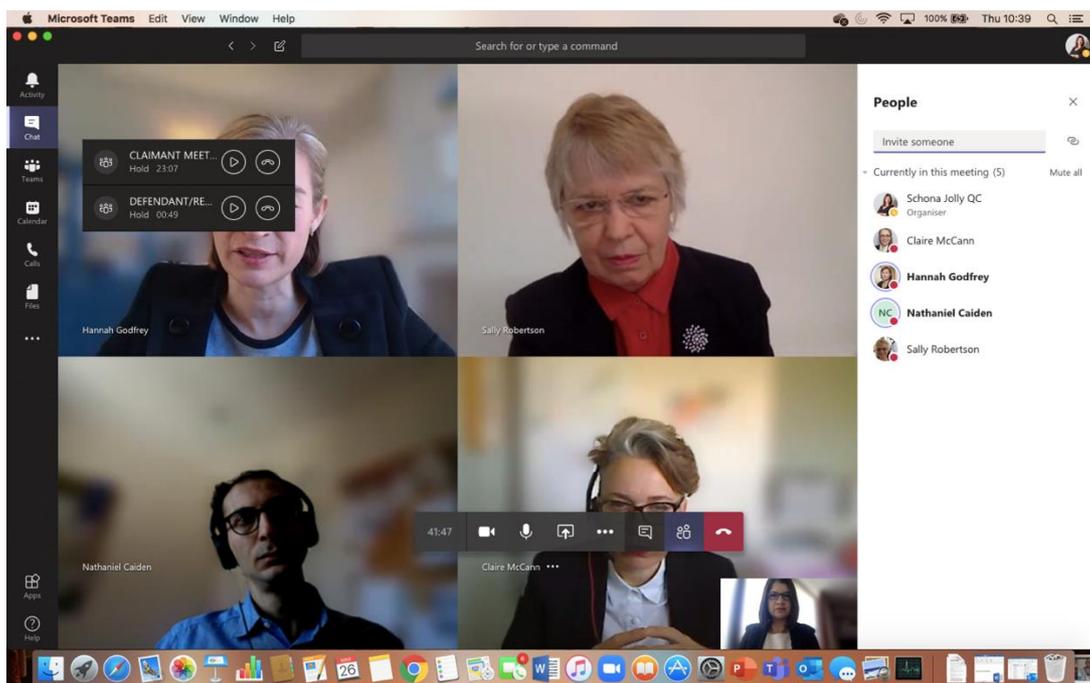
When a party wishes to speak to the other party again, they send a message via the appropriate rapid communication method to the other TEAM LEADER inviting the other party to the JOINT MEETING (or the LEGAL REPS MEETING). This rapid communication method can be supplemented by sending a message on the chat (see below) which is available for the Joint Meeting group.

The parties should agree via the rapid communication method who will reattend: it could be just counsel, or just counsel and solicitors, or all participants (lay participants with their camera/microphones turned off).

Moving between meetings:

All participants will be able to move freely between any meetings they have been invited to.

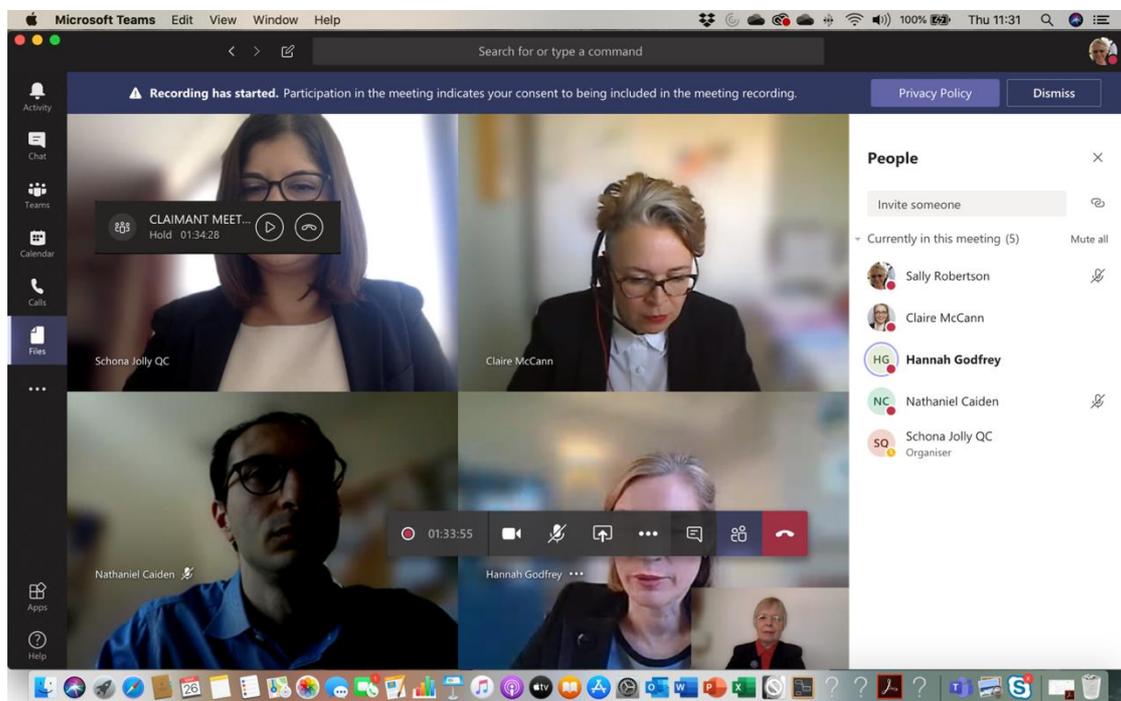
It is a feature of MS Teams that you cannot actively participate in more than one meeting at a time: when you move to another meeting you will be put “on hold” in the meeting you left and will be unable to see or hear what is happening in that meeting. You can rejoin the meeting where you are “on hold” (via the ‘resume’ button, looks like a play button) when you wish. In this way, you can toggle easily between two (or more) meetings. If you prefer you can “hang up” on the meeting you left and “join” the meeting again when ready just as you did when you first joined the meeting (clicking on the link, “Join Microsoft Teams Meeting” in the email invite or outlook calendar entry for the appropriate meeting).



Screenshot No 4

The parties will have privacy in their own meetings. The Defendant will not be able to join the Claimant’s meeting, and vice versa unless *invited* to do so - which you should not do⁴. ALWAYS meet the other party on common ground in the JOINT meeting room (or LEGAL REPS room if you have one)). Always confirm you are in the right meeting before discussing confidential matters, by checking who is present, both verbally and through the side panel. This is to maintain separation of the parties and privacy of communications.

The current participants in any meeting are set out on the side pane to the right of the screen when you click on the ‘*show participants*’ icon in your toolbar; the same function also shows whether participants are “on hold”, whether their mics are muted or on and gives an option to directly message any participant one-to-one.



Screenshot No 5

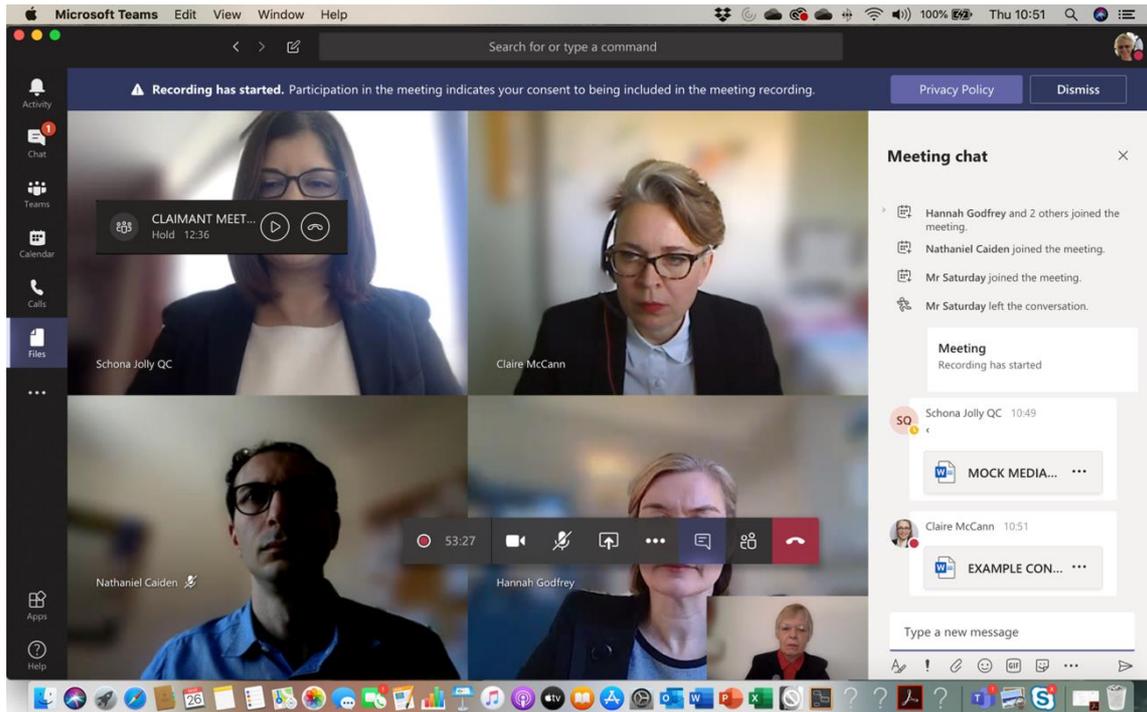
Communication within meetings:

You can communicate directly via video and audio when both camera and microphone are switched on. Each participant is able to switch their own microphone and camera on and off.

To assist with following the meeting proceedings there are various available display setting functions including ‘pin’ participant which enlarges the chosen person’s image and reduces the other participants to small images across the bottom of the screen.

⁴ This is why there must be two ORGANISERS to send invitations for settlement meetings with no neutral mediator, so that the privacy of each CLAIMANT/DEFENDANT ONLY room can be assured.

For textual communication there is a meeting ‘chat’ function accessed via the ‘*show conversation*’ button on the toolbar (and displayed in the side panel). This is accessible by all participants present in a meeting, even when both their microphone and camera are switched off.



Screenshot No 6

This allows any participant in a meeting to message the whole meeting. You can also share document files here (as seen in **screenshot 6** above).

The meeting ‘chat’ is retained on screen so do note that any messages are visible to all participants in that meeting, at any time during the course of the whole meeting (and can be returned to afterwards), not just those in the meeting at the time you send the message. Think of this as though you are writing on a flip chart with permanent marker.

Communication between meetings:

While all participants are still ‘joined’ to the JOINT MEETING you can send a message to all parties using the ‘chat’ in that room. If there have been breaks and parties have left that meeting, use the rapid communication methods set out on the CONTACT SHEET.

All participants must be able to respond at a maximum of 5 minutes’ notice for the duration of the settlement meeting, if they are recalled to the meeting via their agreed form of rapid communication. This should be agreed on the face of the settlement meeting/mediation agreement.

Sharing documents during a meeting:

Click on the '*show conversation*' button on the meeting toolbar. This opens the meeting chat side panel. You can then attach a file to a message in the meeting 'chat' (use the paperclip below the new text box). See **screenshot 6** which shows two files attached to the meeting conversation.

Any files attached to a meeting conversation will be retained on the meeting 'chat' and can be downloaded by other participants. Think of this like leaving a pile of hard copies of that document in the room or emailing a document to an attendee.

Another way to show documents during a meeting is to share your screen. This enables you to show documents to other participants, but does not leave a copy of it in the meeting 'chat' to be viewed later, or to be downloaded. It is like showing your own hard copy to an opponent, but retaining the copy. Do be aware of the possibility of participants taking screen shots. Be cautious! If you do not wish the other party to retain a copy of a document, do not show it to them. Also be cautious about any other open documents on your screen so that you do not accidentally show something you did not intend to show.

Finally – you can share a document by email. Email details for all representatives and the mediator should be on the CONTACT SHEET.

Joining a third party to a meeting:

If you want a third party (such as an IFA, or an important expert or witness) to be able to attend your CLAIMANT/DEFENDANT meeting if required but not to be involved in the settlement meeting process, there is a mechanism for this. Depending on the MS Teams settings configured, any meeting participant may be able to invite another participant into the meeting, by sending a meeting link. However, many organisations have configured their MS Teams settings so that only the mediator or ORGANISER can invite other participants to join, in which case this should be planned with the mediator or ORGANISER in advance.

The invitation generated by Teams should offer a conference team number and ID – for external parties to dial into the meeting. This should be visible on the calendar. If you expect to need to use this function check with your IT supplier beforehand, as some system packages will require you to purchase an additional licence for this feature to be offered.

Failing this, a member of your party can call them directly and put them on speaker so that the rest of the meeting can hear them, or you can set up an independent telephone conference if you prefer.

Settlement agreements:

Settlement agreements are documents that can be worked on in Teams, or via email. As part of your settlement meeting/mediation agreement, you should ensure that an electronic means of signature has been agreed in advance, such as *DocuSign* or other similar service.

Recording and transcript:

MS Teams has a recording function. When all participants are internal (within the same organisation), anyone can record a meeting. When recording is initiated, all parties are notified of this by an alert shown at the top of the screen (and then the recording continues to be shown on the meeting 'chat' pane). There is a function to order, and edit, transcripts of meetings as well. When a meeting is recorded, the recording is sent automatically to the person who initiated the recording when the recording stops after the meeting. It is possible to adjust settings so that a transcript can be automatically generated from the recording too.

When at least one party is external, the ORGANISER's permission is required before the meeting can be recorded.

Be aware of this function. Do not record the meeting or allow others to record the meeting. Do not use the transcript function. Make sure this is agreed beforehand in the settlement meeting/mediation agreement.

File management:

All documents and discussions in settlement meetings are without prejudice and cannot be relied on in court. In the settlement meeting/mediation agreement, all parties must agree to not retain copies and/or to destroy any copies made of any documents shared during the meeting, other than settlement agreements signed by both parties. Make sure this is agreed beforehand in the settlement meeting/mediation agreement.

**SCHONA JOLLY QC
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**CLOISTERS
26 March 2020**