



## **EMPLOYMENT TRIBUNALS (ENGLAND & WALES)**

### **Presidential Guidance: Vulnerable parties and witnesses in Employment Tribunal proceedings**

1. This Presidential Guidance is issued in England & Wales under the provisions of Rule 7 of the First Schedule to the Employment Tribunals (Constitution and Rules of Procedure) Regulation 2013 (“the Rules”).
2. Whilst the Employment Tribunals in England & Wales must have regard to such Presidential Guidance, they will not be bound by it and they have the discretion available to them as set out in the Rules as to how to use their case management powers and judicial discretion generally.
3. This Presidential Guidance is in relation to vulnerable parties and witnesses (including children) participating in Employment Tribunal proceedings. It does not supersede or alter any other Presidential Guidance. Practice Directions and Presidential Guidance in general may be found at:  
<https://www.judiciary.uk/publications/employment-rules-and-legislation-practice-directions/>.

#### **Principal purpose of this guidance**

4. The principal purpose of this Presidential Guidance is to focus the attention of all Employment Tribunal judges and members, parties, witnesses and representatives upon the issue of vulnerability, however that issue might arise or appear. There is no universal definition of vulnerability for this purpose, but a good test of vulnerability might be whether the person is likely to suffer fear or distress in giving evidence because of their own circumstances or those relating to the case.
5. The requirement to deal with a case justly is set out in the overriding objective contained in rule 2. This includes the tribunal and all parties to the proceedings ensuring that all parties can effectively participate in proceedings and that all witnesses can give their best evidence.
6. The tribunal and parties need to identify any party or witness who is a vulnerable person at the earliest possible stage of proceedings. This may be done via the ET1 claim form or the ET3 response form or separately by any reasonable method of communication with the tribunal. They should consider whether a party’s participation in the proceedings is likely to be diminished by reason of vulnerability. They should also consider whether the quality of the evidence given by a party or witness is likely to be diminished by reason of

vulnerability. If so, in either example, they need to consider whether it is necessary to make directions or orders as a result.

7. This can include considering the setting of “ground rules” before a vulnerable witness gives evidence. That involves deciding what directions or orders are necessary in relation to the nature and extent of that evidence. That includes consideration of the conduct of the representatives and/or the parties in respect of the evidence of that person. Consideration will also be required as to any necessary support in place for that person. If in any doubt, ask the person concerned.

### **Background to the guidance**

8. As the Civil Justice Council has noted, access to justice, just procedures and fair hearings are essential elements of our justice system.<sup>1</sup> To ensure that the Employment Tribunal system works properly, such elements need to address the needs of parties, witnesses and other participants who by reason of mental or physical disability, intellectual or social disadvantage, fear or distress are vulnerable.
9. As in the civil justice system, vulnerable parties and witnesses in Employment Tribunal proceedings are not a homogenous group. Mental or physical disability and intellectual or social disadvantage can be obvious barriers to access to justice in employment litigation.<sup>2</sup> Some Employment Tribunal litigants are vulnerable because of the nature of the adversarial proceedings in which they are engaged. They may be fearful of intimidation or reprisal. Some parties or witnesses may react adversely to the presence of another party or witness in the hearing room.
10. As the Civil Justice Council recognises, vulnerability can be internalised or be a reaction to the litigation process itself. It may be generalised or situational, permanent or temporary, or a mixture.
11. Particular difficulties may arise when giving evidence in the tribunal. Legal language or terminology can create barriers to understanding the tribunal process. Vulnerability can be both cause and/or effect in understanding questions asked during a hearing – for example, in cross-examination. This can

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<sup>1</sup> Civil Justice Council, *A Consultation Paper: Vulnerable Witnesses and Parties Within Civil Proceedings: Current Position and Recommendations for Change* (August 2019) and Civil Justice Council, *Vulnerable Witnesses and Parties Within Civil Proceedings: Current Position and Recommendations for Change* (February 2020) See: <https://www.judiciary.uk/wp-content/uploads/2019/09/Vulnerable-witnesses-and-parties-consultation-September-2019.pdf> and <https://www.judiciary.uk/announcements/civil-justice-council-proposes-better-assistance-for-vulnerable-witnesses/>. This Presidential Guidance draws deeply upon the two Civil Justice Council papers and acknowledges their assistance. They contain a wealth of information and useful sources. See also: Northern Ireland Law Commission, *Vulnerable witnesses in civil proceedings: Consultation Paper* (NILC4, 2010); Northern Ireland Law Commission, *Vulnerable witnesses in civil proceedings: Report* (NILC10, 2011); JUSTICE, *Understanding Courts* (January 2019).

<sup>2</sup> Vulnerability might also result from disadvantages or difficulties arising from conditions which do not necessarily meet the legal definition of disability or which have not been assessed or diagnosed as such.

impact negatively upon their conduct and demeanour in the hearing room and to their exclusion and disadvantage.

12. Both the Criminal Procedure Rules and the Family Procedure Rules make specific provision for vulnerable parties and witnesses. Consideration is being given to amending the Civil Procedure Rules to similar effect. There is no obvious need to reinvent the wheel if the excellent work done in the criminal, family and civil jurisdictions can be adapted for use in the Employment Tribunal.

### **The guidance**

13. In any relevant case, and where and as appropriate, the tribunal and the parties should consider the vulnerability of a party or witness as part of the tribunal's case management powers. It would be sensible to consider whether a party's participation in the proceedings generally is likely to be diminished by reason of vulnerability. If so, and subject to the views of the parties, the tribunal might decide whether to make appropriate directions or orders to facilitate participation. It would also be sensible to consider whether the quality of the evidence given by a party or witness is likely to be diminished by reason of vulnerability. If so, and subject to the views of the witness and the parties, the tribunal might decide whether to make appropriate directions or orders to facilitate participation.
14. When deciding whether to make appropriate directions or orders to facilitate participation in Employment Tribunal proceedings regard may be had in particular to:
  - the impact of any actual or perceived or potential intimidation of a party or witness
  - whether the party or witness has or may have a mental disability or other mental health condition
  - whether the party or witness otherwise has or may have a significant impairment of intelligence or social functioning
  - whether the party or witness has or may have a physical disability or other physical health condition
  - whether the party or witness is undergoing medical treatment
  - the nature and extent of the information before the tribunal (including any medical or other evidence)
  - the issues arising in the proceedings
  - whether a matter is contentious
  - the age, maturity and understanding of the party or witness
  - the social and cultural background of the party or witness
  - the ethnic origins of the party or witness (so far as might be relevant)
  - the domestic circumstances of the party or witness
  - the religious beliefs of the party or witness (so far as might be relevant)
  - any questions which the tribunal will put (or cause to be put) to a witness
  - any characteristic of the party or witness which is relevant to the direction or order that may be made
  - whether any measure is available to the tribunal
  - the costs of any available measure

- the views of the vulnerable party or witness
- any other relevant matter.<sup>3</sup>

15. The measures that might be relevant and available include those which:

- prevent a party or witness from seeing or being seen by another party or witness (such as screens)
- allow a party or witness to participate in hearings and give evidence from another location by live link (such as by Skype or video conferencing or telephone)
- provide for a party or witness to use a device to help communication
- provide for a party or witness to participate in proceedings with the assistance of an intermediary (such as a communication specialist or BSL interpreter)
- provide for a party or witness to be questioned in tribunal with the assistance of an intermediary.

16. The orders or measures concerned may fall to be considered by the tribunal of its own initiative or on the application of a party or interested person (including whether the matter is raised other than by way of a formal application). It may then become necessary for HMCTS to be advised by the tribunal of what may be required.

17. The tribunal might look to the Criminal Procedure Rules or the Family Procedure Rules and associated instruments for assistance in interpreting what direction or orders to facilitate participation in tribunal proceedings might be made. However, the tribunal must always take account of the fact that neither the Criminal Procedure Rules nor the Family Procedure Rules and their associated instruments apply to the Employment Tribunal. The tribunal's powers to act are those outlined and delineated by the Employment Tribunals Act 1996 and the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

18. The tribunal may not direct or order that public funding must be available to provide such a measure. That is properly a matter for Her Majesty's Courts and Tribunals Service (HMCTS) and the Ministry of Justice (MoJ). Nevertheless, some public funding for a medical report or evidence might be available in some circumstances. If an Employment Judge orders the production of essential medical reports or evidence, repayment may be made in line with indicative HMCTS rates. Inquiry by the party or witness should first be made of HMCTS as a guide to what is possible or reasonable before incurring any costs.

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<sup>3</sup> Such as a previous determination of vulnerability by another court or tribunal or in another comparable context; or communication and other needs arising from neurodiversity. In the widest possible sense, a party or witness whose first language is not English may be vulnerable, but it is not intended that this Guidance should address that issue here.

## **Case management and “ground rules”**

19. Active case management is an important part of this guidance. Active case management at the earliest suitable opportunity is desirable in order to enable proper participation of the vulnerable person in the case management process.
20. The Employment Tribunal Rules of Procedure do not provide for “ground rules” hearings.<sup>4</sup> However, that does not prevent “ground rules” being considered at any stage of the proceedings or at any appropriate hearing, including at a preliminary hearing listed for that purpose or at a case management hearing generally or whenever the tribunal is exercising any of its case management powers, whether at a hearing or on paper.<sup>5</sup>
21. A particular feature of the management of cases involving a vulnerable person will be a readiness to provide extended time for compliance with any step. The tribunal will also expect and require familiarity on the part of representatives with the Advocates Toolkits (see below) and any professional regulations or codes of practice. The tribunal will also wish to ensure that necessary facilities are available at the hearing centre and in the hearing room. The tribunal’s standard case management agenda will request information as to vulnerability of a party or witness, as appropriate.

## **Examples of adjustments for vulnerability**

22. The Criminal Procedure Rules, the Family Procedure Rules and the Civil Justice Council provide various examples of the kinds of adjustments that could be made by the tribunal to its process where appropriate to do so. They include:
  - Video recorded evidence in chief
  - Pre-recorded evidence in chief
  - Evidence by deposition (where permitted by CPR 34.8)
  - Pre-recorded cross-examination or re-examination
  - Examination of a witness through an intermediary
  - Questioning of a witness by the judge
  - Evidence by live link
  - Screening a witness while giving evidence
  - Evidence in private

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<sup>4</sup> The Court of Appeal has provided important guidance to Employment Tribunals on the use of ground rules hearings. See: *J v K* [2019] EWCA Civ 5 paras 33-41 and *Anderson v Turning Point Eespro* [2019] EWCA Civ 815 paras 30-32. See also the earlier decision in *Duffy v George* [2013] EWCA Civ 908 (a sexual harassment claim involving a claimant who absented herself from the hearing because she was said to be scared of attending).

<sup>5</sup> The “ground rules” should be considered as soon as possible and kept under review. Obvious trigger points in the process will include the initial consideration of the claim and response and whenever correspondence is received from or an application is made by any person; or any other suitable occasion. The tribunal will wish to consider the timing of considering and setting any “ground rules” and whether to do so at a hearing listed for that purpose and by way of a case management order or otherwise. The tribunal should balance the effect that any delay in the proceedings might have upon a vulnerable person against the need to ensure that proper consideration is given to the setting of “ground rules” where and when required to ensure compliance with the overriding objective.

- Provision of aids to communication<sup>6</sup>
- Provision of an interpreter
- Reporting restrictions
- Ground rules hearings
- Waiting rooms
- Timetabling
- Use of appropriate language
- Avoidance of jargon and idiom
- Control of irrelevant or repetitive, oppressive or intimidating questioning
- Control of questions in cross-examination so as to avoid a witness being misled or confused, thus undermining the accuracy and completeness of their evidence

23. Whether any of these examples are an appropriate or possible adjustment in any particular case is a matter of judicial discretion in the light of all the circumstances.<sup>7</sup> It may then become necessary for HMCTS to be advised by the tribunal of what may be required.

### **Further considerations**

24. Employment Tribunal judges and members receive regular and focused induction and continuation training on discrimination law and practice, equal treatment, the social context of judging, judgecraft and judicial skills, and judicial communication. Such training already addresses issues of vulnerability and vulnerable persons. The President recommends and requires that such national and regional training takes full account of this Presidential Guidance.

25. Employment Tribunal judges and HMCTS already devote considerable attention to information (in suitable formats) provided in hard copy, online and by video in respect of the tribunal process.<sup>8</sup> Such information already addresses issues of vulnerability and vulnerable persons. The President recommends that such information takes full account of this Presidential Guidance.

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<sup>6</sup> In the context of Employment Tribunal hearings, guidance on the possibility of allowing a party to use a recording device at the hearing if he or she has difficulty making a contemporaneous note because of a disability, despite the usual restrictions placed on such recording by section 9 of the Contempt of Court Act 1981, has been provided by the EAT in *Heal v University of Oxford* (4 February 2020) at para 27(e).

<sup>7</sup> These are intended to be examples and not an exhaustive list. In some cases, taking a decision on paper without an in person hearing might be appropriate; in others, requiring written questions or submissions rather than oral questions or submissions might be good practice; in still others, allowing more time for participation in a hearing or staying/adjourning a hearing might be considered. This will always be a matter for judicial discretion and decision in all the circumstances.

<sup>8</sup> Each Employment Tribunal region maintains information about local organisations or services that can provide some degree of advice, assistance or support to or for litigants in person and/or vulnerable parties and witnesses.

## **Tribunal participants with a disability: relevant legislation**

26. Many tribunal participants who have a disability will also be vulnerable persons. In addition to the guidance provided above, regard also needs to be had to relevant legislation and case law.<sup>9</sup>
27. For tribunal participants whose disability satisfies the definition of a disabled person, the Equality Act 2010 might provide a duty to make adjustments for them in the tribunal process. The duty to make reasonable adjustments in section 20 of the Equality Act 2010 applies to courts and tribunals because section 29 imposes a duty on those exercising a public function not to discriminate. To the extent that HMCTS might have a duty under the Equality Act 2010 it will be derived from sections 20 and 29. That is beyond the scope of this Presidential Guidance.
28. However, so far as the judicial process involved in court or tribunal proceedings is concerned, Part 3 of Schedule 3 to the Equality Act 2010 provides an exception by exempting judicial functions from the duties and obligations of the Act.
29. Nevertheless, although the Equality Act 2010 might not apply to the Employment Tribunal in the exercise of its judicial functions, its obligation to make reasonable adjustments for disabled participants in the judicial process may derive from other sources.
30. First, the overriding objective in rule 2 of the Employment Tribunals Rules of Procedure 2013 requires the tribunal to deal with cases fairly and justly.
31. Second, article 6 of the European Convention on Human Rights (read in tandem with the non-discrimination principle in article 14) establishes the right to a fair hearing in public within a reasonable time.
32. Third, the concepts of justice, fairness and a fair hearing are rooted in the common law.
33. Fourth, article 13 of the UN Convention on the Rights of Persons with Disabilities requires signatory states to ensure effective access to justice for disabled persons on an equal basis with others. This includes the provision of procedural and age-appropriate accommodations in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
34. A refusal to make a particular adjustment for a vulnerable person to ensure their effective participation in proceedings and the giving of best evidence should be

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<sup>9</sup> This section draws upon “Tribunal litigants with mental health issues – 1”, *IDS Employment Law Brief* 1100 (September 2018) 14-19. See also: “Tribunal litigants with mental health issues – 2”, *IDS Employment Law Brief* 1101 (September 2018) 13-18.

a reasoned one. However, these obligations are not without limits.<sup>10</sup> The right to a fair hearing also applies to both parties.

### **Equal Treatment Bench Book**

35. All judges must have regard to the guidance as to good practice provided in the Equal Treatment Bench Book published by the Judicial College and regularly updated. See: <https://www.judiciary.uk/publications/new-edition-of-the-equal-treatment-bench-book-launched/>.
36. Its relevance and importance in Employment Tribunal proceedings has been recognised judicially.<sup>11</sup> Chapters 2 and 4, and Appendix B list examples of the kinds of adjustments that can be made at different stages of proceedings. The Equal Treatment Bench Book provides some support for holding “ground rules” hearings in the Employment Tribunal via the tribunal’s case management powers.<sup>12</sup>

### **Vulnerability and the capacity to litigate**

37. The vulnerable status of a party might give rise to a question about their mental capacity to conduct legal proceedings.<sup>13</sup> There is no express provision dealing with this issue in the Employment Tribunal procedural rules (for example, for the appointment of a litigation friend).<sup>14</sup> Nevertheless, the tribunal may use its general case management powers in rule 29 of its procedural rules to appoint a litigation friend,<sup>15</sup> although uncertainty remains as to whether or how this is best achieved. Chapter 5 of the Equal Treatment Bench Book is also relevant here. See: <https://www.judiciary.uk/publications/new-edition-of-the-equal-treatment-bench-book-launched/>. Parties or advocates are encouraged to make an appropriate application to the tribunal, in whatever form is seen as most appropriate, as early in the proceedings as possible.

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<sup>10</sup> See: *U v Butler & Wilson Ltd* (2014) EAT 0354/13; *Rackham v NHS Professionals Ltd* (2015) EAT 0110/15; *Shui v University of Manchester* [2018] ICR 77 EAT.

<sup>11</sup> See: *CPS v Fraser* [2014] ICR D18 EAT; *U v Butler & Wilson Ltd* (2014) EAT 0354/13; *Rackham v NHS Professionals Ltd* (2015) EAT 0110/15.

<sup>12</sup> See: *Rackham v NHS Professionals Ltd* (2015) EAT 0110/15; *Galo v Bombardier Aerospace UK* [2016] IRLR 703 NICA. Contrast *Leeks v Norfolk & Norwich University Hospital NHS Foundation Trust* [2018] ICR 1257 EAT.

<sup>13</sup> This section draws upon “Tribunal litigants with mental health issues – 1”, *IDS Employment Law Brief* 1100 (September 2018) 14-19. See also: “Tribunal litigants with mental health issues – 2”, *IDS Employment Law Brief* 1101 (September 2018) 13-18. The issue can arise in unexpected ways: for example, where a respondent is a disabled person in receipt of direct payments and “employing” a carer and where the question is “who is the employer of the carer?”

<sup>14</sup> See: *Johnson v Edwardian International Hotels Ltd* (2008) EAT 0588/07; *Kotecha v Insurety plc t/a Capital Health Care* (2010) EAT 0537/09. The ability of an Employment Tribunal to order an assessment of a party’s capacity to litigate or to participate, despite an assumption of capacity in section 1(2) of the Mental Capacity Act 2005, was explored by the EAT in *Royal Bank of Scotland plc v AB* (27 February 2020).

<sup>15</sup> *Jhuti v Royal Mail Group Ltd* [2018] ICR 1077 EAT (in which the EAT provides broad guidance as to this issue). See also: *AM (Afghanistan) v Secretary of State for the Home Department* [2017] EWCA Civ 1123.



## **The Advocates Gateway**

38. The Advocate's Gateway (TAG) provides free access to practical, evidence-based guidance on vulnerable witnesses and defendants. TAG's main aims are to promote the maintenance of the highest ethical and professional standards in the questioning of people who are vulnerable in justice settings and to provide practitioners with evidence-based guidance and support in the form of toolkits. See: <https://www.theadvocatesgateway.org>.
39. Toolkit 17 which concerns vulnerable parties and witnesses in civil matters (including employment) is a good starting point. It links to the other TAG toolkits which may be relevant in civil and employment matters, and other sources of guidance too. See: <https://www.theadvocatesgateway.org/images/toolkits/17-vulnerable-witnesses-and-parties-in-the-civil-courts-2015.pdf>.
40. It is recommended that Employment Tribunal judges and representatives make themselves familiar with the relevant toolkits, both generally and as the need arises. Although not all the toolkits will be directly relevant in Employment Tribunal proceedings, they are as follows:
  1. Ground rules hearings and the fair treatment of vulnerable people in court (with ground rules hearing checklist)
    - 1a. Case management in criminal cases when a witness or defendant is vulnerable (with essential questions checklist)
  2. General principles from research, policy and guidance: planning to question a vulnerable person or someone with communication needs
  3. Planning to question someone with an autism spectrum disorder including Asperger syndrome
  4. Planning to question someone with a learning disability
  5. Planning to question someone with 'hidden' disabilities: specific language impairment, dyslexia, dyspraxia, dyscalculia and AD(H)
  6. Planning to question a child or young person
  7. Additional factors concerning children under 7 (or functioning at a very young age)
  8. Effective participation of young defendants
  9. Planning to question someone using a remote link
  10. Identifying vulnerability in witnesses and parties and making adjustments

11. Planning to question someone who is deaf
12. General principles when questioning witnesses and defendants with mental disorder (this toolkit is currently under review and a revised version will be published in due course)
13. Vulnerable witnesses and parties in the family courts
14. Using communication aids in the criminal justice system
15. Witnesses and defendants with autism: memory and sensory issues
16. Intermediaries: step by step
17. Vulnerable witnesses and parties in the civil courts
18. Working with traumatised witnesses, defendants and parties (this toolkit is currently under review and a revised version will be published in due course)

### **Other guidance**

41. The Law Society's practice notes on meeting the needs of vulnerable clients are available at:  
<https://www.lawsociety.org.uk/support-services/advice/practice-notes/meeting-the-needs-of-vulnerable-clients-july-2015/>.  
These practice notes are aimed at encouraging good practice by practitioners, but some of the content may be applicable in Employment Tribunal proceedings, such as section 2 which concerns how to identify vulnerability. Section 8 also contains other sources of guidance in relation to specific disabilities.
42. The Bar Council also provides training on "advocacy and the vulnerable" for members of the Bar.<sup>16</sup>
43. In the First-tier Tribunal (Immigration and Asylum Chamber), *Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance* is also of assistance, although not directly applicable in the Employment Tribunal. See: <https://www.judiciary.uk/wp-content/uploads/2014/07/ChildWitnessGuidance.pdf>. Of note here is its provision that "A child, vulnerable adult or sensitive witness will only be required to attend as a witness and give evidence at a hearing where the Tribunal determines that the evidence is necessary to enable the fair hearing of the case and their welfare would not be prejudiced by doing so."

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<sup>16</sup> See also: The Inns of Court College of Advocacy, *Raising the Bar* (2011). There is also relevant information on vulnerability on the website of the Bar Standards Board.

## **Privacy and vulnerability**

44. This guidance recognises that a vulnerable party or witness might wish to enjoy a degree of privacy in respect of the Employment Tribunal proceedings or their evidence at the tribunal. However, apart from case management hearings (which are held in private), tribunal hearings are generally public hearings. In addition, Employment Tribunal judgments and reasons are required by the relevant regulations to be maintained on a public register, which is at present hosted online at <https://www.gov.uk/employment-tribunal-decisions>.
45. Except in cases involving national security, the Employment Tribunal has no power to exclude a judgment from the online register or to agree to an application to remove it from the register or to redact it.<sup>17</sup> This is an important illustration of the open justice principle.
46. Nevertheless, Employment Tribunal judges can be expected to be alert to avoiding naming in a judgment or reasons a witness or other person who is not a party unless it is necessary to do so in keeping with the open justice principle. This may be particularly so when the non-party witness or other person is a child or vulnerable adult.
47. Otherwise, an application to the tribunal under rule 50 of the Rules (privacy and restrictions on disclosure) may assist a vulnerable person who seeks a degree of privacy. The application should be made on notice to the tribunal and to the other parties as early as possible, and ideally in advance of any relevant hearing at which the tribunal begins to hear evidence. Such applications can be time-consuming to make and to decide, and may result in hearing time being lost.
48. Rule 50 provides that a tribunal may at any stage of the proceedings, on its own initiative<sup>18</sup> or on an application, make an order with a view to preventing or restricting the public disclosure of any aspect of those proceedings so far as it considers necessary in the interests of justice or in order to protect the Convention rights of any person<sup>19</sup> or in the circumstances identified in section 10A of the Employment Tribunals Act 1996 (confidential information). In considering whether to make an order under rule 50, the tribunal shall give full weight to the principle of open justice and to the Convention right to freedom of expression.
49. An order under rule 50 may include an order that a hearing that would otherwise be in public be conducted, in whole or in part, in private. See, for example, the Employment Tribunals Act 1996 section 10A (regarding confidential information).

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<sup>17</sup> *L v Q Ltd* [2019] EWCA Civ 1417.

<sup>18</sup> It is not at present possible to give guidance to judges as to when it would be appropriate to make a rule 50 order of the tribunal's own initiative. This is a matter for judicial discretion and decision in all the circumstances of the case.

<sup>19</sup> That is, relevant rights under the European Convention on Human Rights: Human Rights Act 1998 section 1.

50. The tribunal might also make an order that the identities of specified parties, witnesses or other persons referred to in the proceedings should not be disclosed to the public, by the use of anonymisation or otherwise, whether in the course of any hearing or in its listing or in any documents entered on the register or otherwise forming part of the public record.
51. It is also possible for there to be an order for measures preventing witnesses at a public hearing being identifiable by members of the public.
52. A restricted reporting order is also possible within the terms of section 11 (allegations of sexual offences<sup>20</sup> or sexual misconduct) or section 12 (restriction of publicity in disability cases) of the Employment Tribunals Act 1996.
53. Any party, or other person with a legitimate interest, who has not had a reasonable opportunity to make representations before an order under rule 50 is made may apply to the Tribunal in writing for the order to be revoked or discharged, either on the basis of written representations or, if requested, at a hearing.

### **Coronavirus (Covid-19) pandemic**

54. While the Coronavirus (Covid-19) pandemic continues to affect society, and legal proceedings in particular, appropriate regard shall be had to its effect upon vulnerable persons and their participation in Employment Tribunal proceedings in the context provided by this Presidential Guidance.

Judge Brian Doyle  
President  
Employment Tribunals (England & Wales)  
22 April 2020

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<sup>20</sup> Anonymity afforded by the terms of section 1 of the Sexual Offences (Amendment) Act 1992 (as amended) may also be relevant.