



TRIBUNALS  
JUDICIARY



Employment Tribunals  
(Scotland)

## A road map for 2022-23

On 1 June 2020, we issued a joint “road map” for listing and hearing cases in the two Employment Tribunal jurisdictions in the face of challenges presented by the Covid-19 pandemic. In March 2021, we issued a road map for 2021-22. In view of the challenges that continue to confront us, we have decided to issue a further document explaining what we anticipate happening in the 2022-23 financial year.

The metaphor of a “road map” remains valid, not least because of the twists and turns we expect to encounter as we journey forward and in recognition of the likelihood that some stretches of the road ahead will be bumpier than we might like.

### A brief retrospective

We recognise that the jurisdictions we lead are far from perfect, and that many areas of concern pre-date the pandemic or are unrelated to it. The turnover level of HMCTS staff remains a worry. Waiting times are too long in parts of the country. In some locations, our physical estate is too small, too frail, or both. ECM, the new case management system for Employment Tribunals introduced by HMCTS in the spring of 2021, has so far failed to produce reliable management data. Accurate information on system performance has not been published by HMCTS for many months. We therefore have no reliable information on matters such as the size of the outstanding caseload. While recognising the pressures under which our colleagues in HMCTS work, we cannot be anything other than immensely frustrated by the ongoing data silence. It impairs strategic and operational decision-making.

However, there are many positives to report. Our legal officers recruited in 2021-22 have settled into their role and are delivering significant improvements in service. More have been recruited since, and there are plans to continue doing so. South of the border, the same period saw the recruitment of nearly 150 new fee paid Employment Judges and the cross-assignment of about 40 (mostly fee paid) judges of the First-tier Tribunal. The “virtual region” in England and Wales has been going for nearly a year and has successfully handled hundreds of cases that would otherwise have been postponed for lack of a judge. The adaptability of the Employment Tribunals judiciary has been shown by the high number of hearings taking place on video, and which would otherwise not be taking place; the two ET

jurisdictions regularly spend 2,000 to 3,000 hours a week on the HMCTS Cloud Video Platform (CVP).

We again offer our heartfelt thanks to all those – judges, non-legal members and HMCTS staff members – who have continued to support the ongoing administration of workplace justice during times of unprecedented challenge.

## **HMCTS reform**

In an ideal world, 2022-23 would provide a period of consolidation. However, if anything, the pace of change will increase. This is because the Employment Tribunals are now in the grip of the modernisation process known as the [HMCTS Reform Programme](#).

In the context of the Employment Tribunals, HMCTS reform aims to take longstanding paper-based processes and make them digital, resulting in an electronic system of case data that better serves judiciary, staff and our system users.

Instead of sending and receiving letters and emails to and from our various regional offices and hearing centres, parties and their representatives would access their case information through a portal designed for that purpose. In the case of legal representatives, the [MyHMCTS portal](#) will be used. If all goes well, HMCTS intends this to become the primary means of communication with the Tribunal, allowing for automated updates. South of the border, some administrative work will be done from [Court and Tribunal Service Centres](#) (CTSCs), which will also operate as the frontline for telephone enquiries. (Scotland already has a variety of functions centralised in Glasgow, including initial telephone enquiries.) There will be an element of automation in the listing process, through a platform known as [ListAssist](#) (although listing policy will remain fundamentally a judicial concern). HMCTS intends for the replacement platform for CVP, the [Video Hearings service](#), to be rolled out to the Employment Tribunals and other parts of the justice system during 2022. HMCTS will offer [digital support services](#) to users, while paper channels will remain open for those unable to access the reformed systems.

These systems will be genuinely transformative.

The leadership judiciary of the Employment Tribunals regularly engage with HMCTS on all reform topics, in order to safeguard the proper administration of workplace justice. Our users can be assured that it is our shared desire for the reform process to enhance, not impede, access to justice. All judicial contributions to reform discussions have that end in mind.

HMCTS have agreed to ensure that system users are consulted via the membership of the respective national user groups.

The reformed system will be rolled out in stages. HMCTS intends for it to begin with open track cases involving unrepresented claimants. There will be a new online service for submitting claims and responding to them. Much remains to be decided. We will inform system users of material developments via our respective national user groups.

## **Video hearings**

There can be no return to the pre-2020 “normal” in the Employment Tribunals. This is because “normal” ways of working will be changed permanently by HMCTS reform, regardless of the impact of the pandemic. However, there is one area where we do wish to take a few steps back, and that is in respect of our reliance on video.

At the moment, the majority of hearings across Great Britain are still taking place on a fully remote basis. Indeed, in some parts of the country, over 90% of hearings are still by video. We want to bring that percentage down. It is driven chiefly by Covid restrictions or estate limitations. That said, we accept that, in some cases, a video hearing reflects the preferences of the parties and, if they have them, their legal representatives. It can be less costly and less disruptive to the lives of those participating.

Our shared view remains that justice is best experienced by the vast majority of individual litigants in a face-to-face environment. How do we reconcile the purity of that aspiration with the stark reality of our resources, and with the need to respond rapidly to the changing circumstances of the pandemic? We think the answer is found in pragmatism. As we said in our last road map, we do not think the solution is to adopt one method to the exclusion of another. We must build on what we have learned over the last two years by recognising that a mixture of platforms (video, hybrid and in-person) will subsist. Pragmatism demands that video remains an essential tool in helping us tackle our outstanding caseload and bring down waiting times, because it effectively triples the size of the estate available to us.

We turn now to discuss the coming financial year.

### **2022-23**

Different Employment Tribunal regions, and different parts of Britain, may need to move at different speeds, just as was the case with our 2021-22 road map. This is because of the variable resources available to the Employment Tribunals across Britain, whether that be the number of usable hearing rooms, the number of judges, the quality of the estate, the type of IT equipment that is available to support remote or hybrid hearings, and the share of the outstanding caseload/ waiting times pertaining to that region.

We qualify what we say below by emphasising that: (1) in every case it will be open to a judge to decide, in the interests of justice, that the default position below should not apply; and (2) it will always be possible for a party to apply to the Tribunal with a request for their hearing to be held using a different format.

The appropriate format for a hearing remains a judicial decision, taken in the light of the Tribunal’s overriding objective. Our respective guidance documents remain valid in identifying the relevant considerations that apply<sup>1</sup>.

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<sup>1</sup> See paragraphs 16 and 17 of the Presidential Guidance applicable in England and Wales [here](#) and paragraphs 8 and 9 of the Practice Direction applicable in Scotland [here](#).

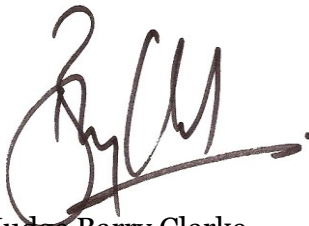
Subject to what is said above and periodic review, the position is as follows:

- Preliminary hearings listed in private for case management purposes will continue to default to **telephone** or **video**. This is likely to become permanent.
- Preliminary hearings in public to determine a straightforward preliminary issue (e.g., time limits in an unfair dismissal case) will continue to default to **video**. This is likely to become permanent. Complex preliminary points requiring more detailed evidence (e.g., the application of TUPE, whether a person is disabled for Equality Act purposes, employment status) will, subject to local estate resources, make greater use of **in-person** hearings.
- Preliminary hearings to consider an application to strike out or for a deposit order will continue to default to **video**. This is likely to become permanent.
- Applications for interim relief will continue to default to **video**. This is likely to become permanent.
- Judicial mediations will continue to default to **video** (although, in some parts of England, telephone mediation will continue). We will keep a close eye on outcomes to determine whether this becomes permanent.
- Final hearings of short track claims (unpaid wages, notice, holiday pay, redundancy pay etc) will, for the time being, continue to default to **video**. However, subject to local estate resources, there will be greater use of **in-person** hearings where the case involves significant disputed evidence.
- Final hearings of standard track claims (unfair dismissal) will vary. In most parts of Britain, as the physical estate recovers and requirements for social distancing are removed, we wish them to return in greater numbers to **in-person**, especially where the case involves significant disputed evidence. This will take time, because recovery will not be uniform. In parts of the country where the backlog is greatest, especially in London and the South East, final hearings of standard track claims will continue to default to **video**, to enable maximum use of judges in the virtual region.
- Our firm wish is for final hearings of open track claims (discrimination and whistleblowing) to default to **in-person**. This is achievable in Scotland, where it will be the default approach. However, it is not achievable in all parts of England and Wales. In some locations, such as London and the South East, the size of the backlog demands the increase in capacity that video can deliver, including through the virtual region. In other locations, such as Wales, there is a lack of hearing rooms. For the time being, and while we continue to press for more resources, there will be greater reliance on **video** in such locations, including hybrid formats. We repeat that, in all cases, north and south of the border, the parties will still be able to express their views at the preliminary hearing held for case management purposes, having regard to our respective guidance documents.

- Other hearings listed specifically to deal with applications for reconsideration or costs/expenses will default to **video**. This is likely to become permanent.

These defaults operate for listing purposes only. We again emphasise that parties can apply to the Tribunal for a different approach; this may result in a change of format or, indeed, a hybrid approach in which one or more of the participants (including members of the panel) joins remotely.

The Employment Tribunals could not have continued to deliver workplace justice over the last two years without the sterling efforts of our judges and non-legal members, the dedicated support of HMCTS staff, and the cooperation of system users. For this, we are truly grateful. We close by thanking you for bearing with us during difficult times.



Judge Barry Clarke  
President of Employment Tribunals  
(England and Wales)



Judge Shona Simon  
President of Employment Tribunals  
(Scotland)

31 March 2022