



TRIBUNALS
JUDICIARY

JUDGE SIMON
PRESIDENT

EMPLOYMENT TRIBUNALS (SCOTLAND)



TRIBUNALS
JUDICIARY

JUDGE CLARKE
PRESIDENT

EMPLOYMENT TRIBUNALS (ENGLAND & WALES)

The Employment Tribunals in England and Wales and in Scotland

FAQs arising from the Covid-19 pandemic

The Covid-19 pandemic and subsequent restrictions have made it difficult for the Employment Tribunals across Great Britain to respond swiftly to enquiries by email and telephone.

This document, now in its third iteration, has been prepared so that the users of the Employment Tribunals in Great Britain can find answers to frequently asked questions (FAQs). It is hoped that it will assist parties who are representing themselves and professional representatives. It now includes a ‘road map’, representing the Presidents’ joint – and partly aspirational – plan, designed to increase gradually the number and type of hearings which can take place over the course of 2020 while pandemic-related restrictions remain in place.

If the answer to your question is not set out below, you can re-send it to the email inbox for the tribunal office dealing with your case. It will be considered as soon as circumstances allow. Please understand that, because of the pandemic, there may be a long delay before the tribunal can reply to you.

This is a living document; it will be amended or updated as the current situation develops.

Finally, please bear with the tribunal during this challenging period. It will assist the tribunal if you avoid sending unnecessary correspondence and making unnecessary telephone calls.

Contents

The FAQs set out in this document are listed below. Please click on the number to go straight to the question that you would like answered.

- [\(1\)](#) I was given a date for a hearing that required me to attend a tribunal office. It has been postponed and converted to a preliminary hearing by telephone, to discuss 'case management'. I disagree with this. Can the hearing continue as before?
- [\(2\)](#) In my case, the hearing was due to start after 26 June 2020. Will it also be postponed and converted to a preliminary hearing by telephone?
- [\(3\)](#) In my case, the tribunal had previously made various orders and directions. They related to 'case management' matters such as exchanging documents. Those orders and directions had deadlines, requiring me to do things by a date between 23 March 2020 and 26 June 2020. Must I still comply with those orders and directions?
- [\(4\)](#) Can my case simply be paused until the pandemic has passed?
- [\(5\)](#) My case has been converted to a preliminary hearing by telephone in accordance with the Presidential Guidance. How should I prepare?
- [\(6\)](#) I was expecting my case to be converted to a preliminary hearing by telephone in accordance with the Presidential Guidance. However, I have heard nothing from the tribunal. What should I do?
- [\(7\)](#) My hearing has been cancelled due to the pandemic. When will it be re-arranged? Will my case just go to the back of the queue?
- [\(8\)](#) I have a judicial mediation arranged between 23 March 2020 and 26 June 2020. Will it go ahead?
- [\(9\)](#) Is my local Employment Tribunal open?
- [\(10\)](#) Are there any types of work that the Employment Tribunal is prioritising?
- [\(11\)](#) What if I consider my case to be urgent?
- [\(12\)](#) I am representing myself. I am finding it difficult to prepare my case for a hearing, because I don't have access to the information I need or the witnesses to whom I need to speak. I am worried the tribunal may just go ahead with the final hearing of my case despite these difficulties. What should I do?
- [\(13\)](#) I am supposed to be attending a hearing, or a preliminary hearing by telephone or video, within the next few days. I don't think I am well enough to attend. What should I do?

- (14) I tried to hand-deliver my ET1 claim form to a tribunal office, but the building appeared to be closed. What should I do?
- (15) What technology is available for use in a video hearing?
- (16) What etiquette applies to a video hearing?
- (17) I keep telephoning the tribunal office handling my case, but I cannot get an answer. What should I do?
- (18) Given the problems caused by the pandemic, will the Employment Tribunal extend the time limits within which a claim should be brought?
- (19) Given the problems caused by the pandemic, will the Employment Tribunal extend the 28-day deadline by which a response should be provided?
- (20) I head the HR department of a large employer or provide a large employer with legal advice. I am concerned that, for a reason relating to the pandemic, the employer will miss an ET1 claim form sent by post to the usual address. Will the tribunal agree, for the duration of the pandemic, to serve all ET1 claim forms by email to a dedicated inbox?
- (21) I am concerned about whether the respondent (employer) will receive my claim form when the tribunal sends it to them. This is because I know that, due to the pandemic, no one is currently working at the postal address for the respondent that I will be putting/have put on my claim form. What should I do?
- (22) I am an employer who was contacted by Acas about early conciliation in connection with a claim they told me might be made to the tribunal against my business, which is currently closed due to the pandemic. The case was not settled by Acas, but some weeks have now passed, I have not been visiting my business address and I have heard nothing from the tribunal. Can I assume that no claim has been made to the tribunal?
- (23) Can my case be decided on the available paperwork, without a hearing?
- (24) I know that the ET Presidents said they were going to review the direction they issued about what was to happen, in light of the Covid-19 pandemic, to ET cases already listed for hearing. Have they done that?
- (25) I am concerned about attending a hearing that has been fixed to take place in person at an HMCTS building. What has HMCTS done to make the building as safe as possible?

[Appendix 1](#): a road map

[Appendix 2](#): weblinks in this document

(1) I was given a date for a hearing that required me to attend a tribunal office. It has been postponed and converted to a preliminary hearing by telephone, to discuss ‘case management’. I disagree with this. Can the hearing continue as before?

No, it cannot.

Please see the Guidance issued by the Presidents of the Employment Tribunals in England and Wales and in Scotland, in response to the Covid-19 pandemic. It is available at this link:

<https://www.judiciary.uk/wp-content/uploads/2015/03/Presidential-Guidance-ET-Covid19.pdf>

Please also see the updated and amended Direction issued by the Presidents at this link: <https://www.judiciary.uk/wp-content/uploads/2013/08/ET-Covid-19-Direction-Amendment-23.3.20.doc>. The Direction was reviewed on 29 May 2020 in the terms confirmed here: <https://www.judiciary.uk/publications/employment-rules-and-legislation-practice-directions>.

These documents were prepared because of exceptional circumstances concerning public health and based on Government guidance. Unless a judge has directed otherwise, it will not be possible to have a hearing in person (requiring you to come to a tribunal office) if it had been due to start on any date between 23 March 2020 and 26 June 2020.

(2) In my case, the hearing was due to start after 26 June 2020. Will it also be postponed and converted to a preliminary hearing by telephone?

By the time of the third edition of this document, it is possible that some cases due to start after 26 June 2020 have already been postponed as a result of a judicial decision, perhaps following an application by the parties. If your case has not been postponed yet, it may still be able to proceed as planned. It depends on many variables. Please read the ‘road map’ at Appendix 1.

It is recognised that the personal circumstances of a party or witness, or their family members, may mean that you need an answer as soon as possible about what is to happen in your case. For example, it may be difficult or impossible for you to prepare for a hearing listed to take place in the next few months, because of illness, self-isolation or social distancing. If that is so, please write to the tribunal to explain this. A judge will then consider the position as soon as circumstances allow.

(3) In my case, the tribunal had previously made various orders and directions. They related to ‘case management’ matters such as exchanging documents. Those orders and directions had deadlines, requiring me to do things by a date between 23 March 2020 and 26 June 2020. Must I still comply with those orders and directions?

The answer to this question is not straightforward. It depends on when the hearing, requiring you to attend a tribunal office, has been listed.

- If that hearing was due to take place between 23 March 2020 and 26 June 2020, the answer to this question is **no**.

This means that any orders and directions made prior to 23 March 2020, applying to hearings in that window, have been suspended. It also means that you can ‘stand down’ your proposed witnesses.

The question of whether those orders and directions should be reactivated, or whether new orders and directions should be made with different deadlines, will be considered soon; the intention is for them to be considered at the preliminary hearing by telephone into which that hearing has been converted.

It is appreciated that some parties may disagree with this approach. For example, they may want those orders complied with, so that the preliminary hearing is more productive. That is understandable. The problem is that compliance may put pressure on parties to undertake tasks that contravene the guidelines on social distancing, such as speaking to witnesses, and which operate differently in England, Scotland and Wales. Not everyone has access to technology to enable this to be done electronically. Instead, the parties will discuss the best approach with the judge at the preliminary hearing by telephone.

- If your hearing is due to start after 26 June 2020, the answer is a **qualified yes**.

As matters stand at the date of this third edition, those hearings are still going ahead. The answer is qualified because it depends on whether it is the sort of case that can proceed according to the Presidents’ joint ‘road map’ at Appendix 1.

As the ‘road map’ explains, the second half of the calendar year has been split into three periods: July/August; September/October; and November/December. In these periods, different approaches will be taken as the Employment Tribunals rebuild their capacity to conduct in-person hearings, video hearings and combinations of the two. This approach is likely to differ between parts of Great Britain (and regions within England) because staff numbers remain variable.

It is recognised that the personal circumstances of a party or witness, or their family members, may mean that, in respect of a hearing requiring attendance at a tribunal office after 26 June 2020, you need a decision as soon as possible about what is to happen in your case. For example, it may be difficult or impossible for you to comply with the orders and directions because of illness, self-isolation or social distancing. If that is so, please write to the tribunal to explain this, and ask for the order or direction to be suspended or ask for an extension of time to comply with it. A judge will then consider the position as soon as circumstances allow.

This answer only applies to orders and directions made **before** 23 March 2020. If you have attended a preliminary hearing by telephone **on or after** 23 March 2020, and a judge has made orders and directions at that preliminary hearing, you should assume that they continue to apply.

(4) Can my case simply be paused until the pandemic has passed?

A pause of proceedings is known as a ‘stay’ in England and Wales and as a ‘sist’ in Scotland.

It may or may not be appropriate to take such a step in your case. It will depend upon the circumstances and the application of the overriding objective, which is to deal with cases fairly and justly. In some cases, a judge will agree that fairness and justice require such a pause; in other cases, the judge will consider that it is not fair or just to pause the case. The issue is best discussed at the preliminary hearing by telephone, where both parties’ views can be considered.

(5) My case has been converted to a preliminary hearing by telephone in accordance with the Presidential Guidance. How should I prepare?

If your case had been allocated dates for a hearing requiring you to attend a tribunal office, and has now been converted to a preliminary hearing by telephone, the discussion with the judge is likely to cover the following points:

- It will be an opportunity to ‘take stock’ with the parties – in other words, to see where you are currently and what preparatory steps still need to be taken;
- It will enable the judge to give the parties some understanding of the current pressures that the pandemic is placing on the Employment Tribunal system, and to provide as much certainty as possible about the future progress of the case;
- It will enable the judge to investigate with the parties how the Presidential Guidance can be applied to move the case forward;
- The judge can investigate whether the issues in the case can be clarified and/or whether a judgment can be issued, with agreed wording, to dispose of at least some of the areas of dispute; and
- The judge can investigate the parties’ appetite for alternative dispute resolution (‘ADR’), such as judicial mediation.

It would therefore be helpful if you could do the following:

- Before the preliminary hearing by telephone, read the Presidential Guidance on the pandemic. This will help you to be ready for a discussion with the judge about how it might be possible to move the case forward. The Guidance is available here:
<https://www.judiciary.uk/wp-content/uploads/2015/03/Presidential-Guidance-ET-Covid19.pdf>
- Before the preliminary hearing by telephone, consider whether you have the equipment needed to conduct a video hearing at a later stage (such as a laptop, personal computer, smartphone or tablet), access to a reliable integrated camera or a webcam, and access to a reliable internet connection.

- Join the preliminary hearing by telephone ready to discuss any pressing reasons (such as poor health or travelling from overseas) why your case should be prioritised over other cases in the system.

You will not be expected to have any special equipment or software for the preliminary hearing by telephone, which will be organised by the tribunal office handling your case. You will either receive a call at the appointed time (from a judge or from a member of HMCTS staff) or you will receive written instructions in advance, explaining what you need to do.

If you need an interpreter to enable you to participate in the preliminary hearing by telephone, please contact the tribunal office handling your case. You should explain that you need an interpreter, identifying the language and any dialect. The tribunal will arrange for an interpreter to join the call.

If you wish to speak Welsh at a preliminary hearing by telephone to be conducted in Wales, please inform the tribunal's regional office in Cardiff so that arrangements can be made to allocate a Welsh-speaking judge to your case.

A note on case management agenda forms

It will assist the judge if the parties complete the relevant case management agenda form or forms, sending them to the tribunal (as an attachment to an email), with a copy to the other side. This should be done before the preliminary hearing by telephone. Doing so often helps to identify or reduce the issues in dispute. If the parties can agree the contents of the form, so much the better.

There are different forms for use in England, Wales and Scotland.

- In **England**, the agenda form is at page 1-5 of the pdf document available here: <https://www.judiciary.uk/wp-content/uploads/2013/08/empl-trib-agenda-for-case-management-at-prelim-hearing-20170810.pdf>
There is also a Word version of the form available here: <https://www.judiciary.uk/wp-content/uploads/2013/08/empl-trib-agenda-for-case-management-at-prelim-hearing-20170810-2.doc>
You can type your answers into the form, and then save and send it to the tribunal. If you use this link, you may need – depending on your web browser – to check your downloads folder.
- In **Wales**, the version of the form is bilingual and has further questions relevant to devolution and the Welsh language. To use it, you need to scroll down to pages 6-10 of the document stored at the above links, and you can use the pdf or Word version.
- In **Scotland**, there are similar documents for cases involving claims of discrimination or public interest disclosure ('whistleblowing'). There is associated guidance. If you have not already received the documents electronically from the tribunal, you can find them here:

<https://www.judiciary.uk/publications/directions-for-employment-tribunals-scotland>

There are six agenda forms and six guidance notes for use in Scotland (one for each version of the form). You need to make sure that you complete the correct form. There are three agenda forms relevant to claimants:

- Those who are bringing a claim which includes a complaint under the Equality Act, but does not include a complaint about public interest disclosure;
- Those who are bringing a claim which includes a complaint about public interest disclosure, but does not include a complaint under the Equality Act; and
- Those who are bringing a claim which includes both a complaint under the Equality Act and a complaint about public interest disclosure.

There are separate agenda forms for completion by respondents which mirror those for the claimants. There are guidance documents accompanying each of those forms (that is, three guidance notes designed to assist claimants and three designed to assist respondents.)

(6) I was expecting my case to be converted to a preliminary hearing by telephone in accordance with the Presidential Guidance. However, I have heard nothing from the tribunal. What should I do?

Efforts are being made to ensure that every hearing that required attendance at a tribunal office between 23 March 2020 and 26 June 2020 is converted to a preliminary hearing by telephone, to discuss case management, in accordance with the Presidential Guidance.

Because administrative resources are limited, parties may not receive confirmation of this until a week or so ahead of the date when the original hearing had been due to take place. If you have heard nothing yet, such confirmation will hopefully come soon.

The Presidents are aware of a small number of cases where a hearing has not been converted to a preliminary hearing by telephone or where a preliminary hearing by telephone, once arranged, has not taken place. Please bear with the tribunal; this is a consequence of offices not being fully staffed, due to the pandemic. If that has happened to you, the tribunal handling your case will contact you as soon as circumstances allow to rearrange a preliminary hearing by telephone.

(7) My hearing has been cancelled due to the pandemic. When will it be re-arranged? Will my case just go to the back of the queue?

It is the sincere hope of the Presidents that cases can be rearranged as quickly as possible. Unfortunately, they cannot say with certainty when that will be. It depends on the type of case. It also depends on when the public safety consequences of the pandemic are lifted. The Presidents will continue to review the situation at regular intervals. Please read the ‘road map’ at Appendix 1.

You should still discuss the matter with the judge at the preliminary hearing by telephone. For example, it may be possible to hold the hearing quickly using electronic communication methods, as discussed in the Presidential Guidance. It may be possible to allocate new hearing dates (for example, in the autumn or winter of 2020) in the hope that the public safety restrictions have been further lifted by then. It may also be possible to arrange a swift judicial mediation, which could be conducted by telephone or video conference.

Despite all these efforts, it is possible that a proportion of cases will be delayed by a significant period. The backlog of hearings produced by the pandemic will present a challenge to the Employment Tribunal system. The Presidents will be doing all they can to ensure that the system is properly resourced to tackle that challenge.

(8) I have a judicial mediation arranged before 26 June 2020. Will it go ahead?

We very much hope that it will go ahead. However, instead of holding the mediation at a tribunal office, it would be held by telephone or using video technology. The tribunal will aim to contact the parties in advance to consider the appropriate arrangements.

If you are represented during a judicial mediation conducted by telephone or video, you are not required to be present in the same room as your representatives during the process. You should still observe social distancing. To minimise delay when representatives take instructions after discussions with the mediator, all parties should provide contact details to their representatives in advance of the mediation.

Where the mediation takes place using video technology, you should consider in advance whether you have the equipment needed (such as a laptop, personal computer, smartphone or tablet), access to a reliable integrated camera or a webcam, and access to a reliable internet connection.

Further guidance on mediation is available at the links below:

- For England and Wales: <https://www.judiciary.uk/wp-content/uploads/2013/08/presidential-guidance-rule-3-adr-20180122.pdf>
- For Scotland: <https://www.judiciary.uk/wp-content/uploads/2014/08/employment-tribunals-scotland-practice-direction-2.doc>

(9) Is my local Employment Tribunal open?

In England and Wales, most regional offices of Employment Tribunal are open and staffed. They are in the priority locations identified by the Government on this list: <https://www.gov.uk/government/news/priority-courts-to-make-sure-justice-is-served>

All buildings are being risk-assessed and details will be released in due course about which other buildings in the HMCTS estate will re-open.

If a Covid-19 incident leads to a temporary closure of a building, an automated reply will be set up, so that emails to that office's inbox trigger a reply providing a brief explanation of the position.

In Scotland, all Employment Tribunal offices are closed to the public, but they are staffed and can accept correspondence delivered by hand or post. Glasgow Tribunals Centre (20 York Street, Glasgow) is open and can be used as needed for any hearings where personal attendance is required.

It is expected that those Employment Tribunal offices which are closed will reopen gradually over the course of June and July 2020 once risk assessments have been carried out and social distancing measures are in place. There is further information on risk assessments in the 'road map' at Appendix 1.

The present position is, generally, that the Regional Employment Judges (the Vice-President in Scotland) are physically present in a tribunal office, identifying cases that can be progressed. There is a rota system operating, by which some judges are in the office conducting hearings and dealing with correspondence, and other judges are conducting those hearings 'remotely' from home.

HMCTS staff are 'key workers', including those assigned to the Employment Tribunal. However, the number of staff available to provide support to the Employment Tribunal has reduced. Some are absent through ill health or, following Government guidance, they are self-isolating. **As a result, parties may experience a significant delay in receiving replies to correspondence and telephone calls may not be answered.**

Please do not send the tribunal unnecessary correspondence. You should only write to the tribunal if you want to make an application for a case management order or tell the tribunal something important that the tribunal needs to know about your case. You should normally send a copy of the correspondence you have sent to the tribunal to the other party in the case (making clear you have done this on the face of the correspondence), unless you have a very good reason for not doing so. If you think that is so, you should explain in your correspondence why you have not copied it to the other party in the case.

Details on HMCTS planning for the pandemic are available here:

<https://www.gov.uk/guidance/coronavirus-covid-19-courts-and-tribunals-planning-and-preparation>

Details on the judiciary's response to the pandemic are available here:

<https://www.judiciary.uk/coronavirus-covid-19-advice-and-guidance>

(10) Are there any types of work that the Employment Tribunal is prioritising?

Where an Employment Tribunal's regional office is well staffed, efforts will be made, so far as possible, to continue the administration of justice. That will include receiving new claims and, where appropriate, sending them to respondents. However, it may be that you will not hear anything from the tribunal office for some time after you have

submitted your claim (although a claim submitted online should always receive an automated response acknowledging it).

The Presidents recognise that it will not be possible to maintain consistency of service across all parts of Great Britain. They recognise that staff or judicial absence rates may increase as a result of ill-health or self-isolation and they may increase at different rates in different offices. They also recognise that HMCTS staff may be redeployed to support urgent work in, for example, the criminal courts or the family courts.

If, as a result, it becomes necessary to focus on more urgent work in the Employment Tribunal, HMCTS staff will prioritise support for upcoming preliminary hearings by telephone. The following types of case will also be prioritised (a fourth has been added for this latest version of the FAQ document):

- Statutory appeals against prohibition notices;
- Application for interim relief;
- Dismissals where an individual has lost accommodation ‘tied’ to their employment; and
- Covid-19 pandemic-related claims alleging detriment or dismissal on health and safety or protected disclosure grounds under sections 43B(1)(d), 44, 47B, 100 and 103A of the Employment Rights Act 1996.

Efforts will be made to hold public hearings in these cases, so long as they comply with Government guidelines on public safety. The parties are referred to the Presidential Guidance on how this might be achieved.

(11) What if I consider my case to be urgent?

The Presidents recognise that a case may be urgent because it is one of the four types identified in FAQ (10) above. It may also be urgent for some other reason that cannot be predicted in advance.

If you consider with good reason that your case should be treated urgently, please send an email to the tribunal office dealing with your case. Please mark your email as ‘urgent’, by putting that word in the subject field, and copy it to the other side. The subject field should also include your case number and the names of the parties. A judge will then look at it as soon as circumstances allow.

There is more information on Employment Tribunals at this link:

<https://www.gov.uk/courts-tribunals/employment-tribunal>

You may also be able to get assistance from Acas: <https://www.acas.org.uk>

(12) I am representing myself. I am finding it difficult to prepare my case for a hearing, because I don’t have access to the information I need or the witnesses to whom I need to speak. I am worried the tribunal may just go ahead with the final hearing of my case despite these difficulties. What should I do?

The Employment Tribunal has an ‘overriding objective’, which is to deal with cases fairly and justly.

If your concern relates to a hearing that had been due to start before 26 June 2020, it will have been converted to a preliminary hearing by telephone. The orders and directions will also have been suspended, as explained at FAQ (3) above. That preliminary hearing by telephone will give you an opportunity to explain your concerns to the judge. The judge will consider the best approach to take.

If your concern relates to a public hearing that will still take place, for example using telephone or video technology, you should explain your concerns in an email to the tribunal office handling your case. A judge will consider what you say as soon as circumstances allow. It may be possible to arrange another preliminary hearing by telephone to discuss the situation and decide how to proceed.

(13) I am supposed to be attending a hearing, or a preliminary hearing by telephone or video, within the next few days. I don’t think I am well enough to attend. What should I do?

You should send an email to the tribunal office. Please mark your email as ‘urgent’, by putting that word in the subject field, and copy it to the other side. The subject field should also include your case number and the names of the parties. In your email, you should explain your situation and why you want the hearing rearranged for a later date.

If you have any medical evidence to support your position, please attach it to your email. The Presidents recognise that, with the current pressures on the National Health Service and GP surgeries, it may not be possible to obtain this sort of evidence quickly. In that case, do not delay; please send your email to the tribunal with as much information as you can currently provide. It would be helpful if you could also say when you think you may be well enough to attend a hearing. A judge will then consider the position as soon as circumstances allow.

(14) I tried to hand-deliver my ET1 claim form to a tribunal office, but the building appeared to be closed. What should I do?

As noted at FAQ (9) above, it is hoped that many offices of the Employment Tribunal will remain open or at least have staff in them who could accept a hand-delivered item. However, it is feasible that a temporary closure for a reason relating to Covid-19 may make it difficult or impossible to hand-deliver an ET1 claim form.

The Presidents have issued Practice Directions on the presentation of claims. They are available at these links:

- For England and Wales: <https://www.judiciary.uk/wp-content/uploads/2013/08/Presidential-Practice-Direction-Presentation-of-Claims-England-Wales.pdf>

- For Scotland: <https://www.judiciary.uk/wp-content/uploads/2015/03/presidential-practice-direction-scotland-presentation-of-claims.pdf>

There are three permitted methods for the presentation of Employment Tribunal claims. The first is the online submission service provided by HMCTS at this link: www.employmenttribunals.service.gov.uk. The second is by post to a designated address in Leicester (for England and Wales) or Glasgow (for Scotland). The third is by hand-delivery to a designated regional office.

It follows that, if a regional office is closed, you should use one of the other two methods: you should either present your claim online or send it by post to the designated address. Please note that email is **not** an acceptable alternative method for presenting an ET1 claim form.

(15) What technology is available for use in a video hearing?

This is the sort of question that could usefully be discussed during the preliminary hearing by telephone, if it were thought that a public hearing could be progressed using video technology.

Although there is a range of available video platforms, Employment Judges are likely to propose the use of the in-house Cloud Video Platform (CVP) operated by MOJ/HMCTS. If CVP is used, there is no need to download an app.

Although CVP is the preferred options, it does not follow that a judge will refuse to conduct a hearing using a different video platform if that is necessary to ensure access to justice. Other platforms include Microsoft Teams and Skype for Business. The judge's willingness to use these platforms will depend on the circumstances, which include the availability of technical and administrative support from HMCTS, the need to ensure judicial security and the views of the parties.

Further guidance is available at these links:

<https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak>

<https://www.gov.uk/government/publications/how-to-join-a-cloud-video-platform-cvp-hearing/how-to-join-cloud-video-platform-cvp-for-a-video-hearing>

If you wish to speak Welsh at a hearing to be conducted in Wales using a video platform, please inform the tribunal's regional office in Cardiff so that a Welsh-speaking judge can be allocated to your case.

(16) What etiquette applies to a video hearing?

If you take part in a hearing using a video platform, please consider the following rules of etiquette:

- Identify, if possible, a quiet location from which to call;
- Ask any nearby family members or colleagues not to disturb you;

- Join the meeting without any discussion at the start and wait for the judge to begin proceedings;
- Turn off your mobile phone (or switch it to silent);
- Place your mobile phone away from any connected speakers to limit audio interference;
- Avoid sitting somewhere with a source of bright light behind you;
- Consider using a headset, if you have one, to avoid echoes, feedback etc;
- Mute your microphone when not speaking (and remember to unmute when speaking);
- If the facility is available to ‘blur’ your background, consider doing so;
- Do not enter ‘mirror screen’ or ‘share screen’ mode, or send a document or attachment, without seeking the judge’s permission;
- Use a side panel (the instant messaging/chat facility), if available, to signify a wish to speak; and
- Re-join on same invitation link if you are cut off.

Most important of all, **do not record the hearing without permission**. It is a criminal offence to do so.

(17) I keep telephoning the tribunal office handling my case, but I cannot get an answer. What should I do?

As noted at FAQ (9) above, all regional offices have a reduced staff presence because of the pandemic. Some offices are reducing the times when HMCTS staff are available to answer telephones.

Please avoid making unnecessary telephone calls. If you can, send an email instead. The subject field should include your case number and the names of the parties. A member of staff (and, if required, a judge) will consider your query as soon as circumstances allow. There is likely to be a delay in responding to you.

(18) Given the problems caused by the pandemic, will the Employment Tribunal extend the time limits within which a claim should be brought?

The Presidents recognise that the pandemic may have an impact on when and how individuals can take legal advice about claims.

There are strict time limits that apply to the presentation of Employment Tribunal claims. The time limits are affected by the operation of Acas early conciliation (where such conciliation is required). The time limits are set by Parliament. The Employment Tribunal is an independent judicial body. It has no power to change those time limits or to agree in advance that they do not apply.

If a claim is presented late, a judge **may** still allow it to proceed. That sort of judicial decision is usually – although not always – taken at a preliminary hearing arranged for that purpose. The judge will usually have heard evidence from the claimant about the reason for the delay, and listened to arguments presented by the parties or, if they have

them, their representatives. Such a decision will be based on the individual circumstances of the case and applying the relevant law.

The tribunal cannot provide legal advice to parties on such matters.

(19) Given the problems caused by the pandemic, will the Employment Tribunal extend the 28-day deadline by which a response should be provided?

The Presidents recognise that the pandemic may have an impact on when and how respondents can take legal advice about defending claims, or when and how HR departments or legal representatives can contact individuals to understand whether the claimant's account, as set out in an ET1 claim form, should be challenged. It is also recognised that some respondents have been required by Government policy to close, and so may not be monitoring incoming post or email correspondence.

It is recognised that these factors may limit the ability of respondents to send their ET3 response form to the tribunal in time. The deadline is set by Rule 16 of the Employment Tribunals Rules of Procedure 2013 as 28 days. This deadline matters because, if it is missed, the tribunal may issue a judgment in the claimant's favour. This is done under Rule 21 of its Rules of Procedure.

The tribunal has power, under Rule 5 of its Rules of Procedure, to extend that 28-day deadline. This can include a situation where the deadline has already passed.

The Presidents do not consider it appropriate to extend the 28-day deadline generally for all cases in the system where an ET1 claim form has been served. Their view is that it is better for judges to continue as they do presently, which is to respond to applications by respondents for an extension of time on a case-by-case basis. Sometimes, the interests of justice will favour an extension; on other occasions, it will not. It will depend on the circumstances.

However, to reduce the pressure of correspondence on the Employment Tribunal, the Presidents would invite respondents to consider whether a more pragmatic approach during the pandemic is to complete a 'holding' ET3 response form. It might explain that further information will be provided when individuals can be contacted after the pandemic. Further information could be provided at a later stage. For example, it could be provided ahead of a preliminary hearing by telephone, or it could be provided by order of the tribunal with a deadline after the preliminary hearing.

For those respondents who, as a result of closure, are unaware that they have been served with a claim, they should still send in a completed ET3 response form as soon as they can, even where the deadline has passed. It is still possible to do this even if a judgment has already been issued in the claimant's favour because it was thought that the claim was not opposed. The late response form should be accompanied by an application for a retroactive extension of time under Rule 20. Once the claimant's comments have been provided a judge may determine the matter without a hearing.

(20) I head the HR department of a large employer or provide a large employer with legal advice. I am concerned that, for a reason relating to the pandemic, the employer will miss an ET1 claim form sent by post to the usual address. Will the tribunal agree, for the duration of the pandemic, to serve all ET1 claim forms by email to a dedicated inbox?

The Employment Tribunal will continue to serve claims on the address provided by the claimant on the ET1 form, in accordance with its usual practice. However, on application by a respondent, the tribunal will endeavour to **copy** ET1 claim forms to a dedicated inbox or to a dedicated central postal address.

For those employers based in Scotland or Wales, an application for claims to be copied in this way should be sent to the tribunal offices in Glasgow and Cardiff respectively. For those employers based in England, those applications should be sent to the relevant regional office for the Employment Tribunal region where the employer employs workers. For those employers with a national presence, such applications should be sent to all relevant tribunal locations; the tribunal will try to maintain a database for this purpose.

(21) I am concerned about whether the respondent (employer) will receive my claim form when the tribunal sends it to them. This is because I know that, due to the pandemic, no one is currently working at the postal address for the respondent that I will be putting/have put on my claim form. What should I do?

If you have not yet sent your claim form to the tribunal and you know the email address of the respondent then please put that information on the claim form, in addition to the postal address and explain that you believe there is no one at the postal address. The tribunal will then try to send the claim form by email to the respondent. If you have already sent your claim form to the tribunal office, and you know the email address of the respondent, then please email the tribunal office to explain the situation and provide the email address of the respondent.

(22) I am an employer who was contacted by Acas about early conciliation in connection with a claim they told me might be made to the tribunal against my business, which is currently closed due to the pandemic. The case was not settled by Acas, but some weeks have now passed, I have not been visiting my business address and I have heard nothing from the tribunal. Can I assume that no claim has been made to the tribunal?

No, you cannot assume that. The tribunal will not necessarily know your business is closed and, even if it is closed, they will not know what arrangements you have made to check if mail has been received at your business address. The tribunal will send any claim form to the respondent's business address as provided on the claim form. If an email address is provided on the claim form for the respondent, then they will also send a copy of the claim to that address.

It is also important to bear in mind that in some parts of Great Britain it is taking significantly longer than normal to send new claims to respondents, so the fact that you

have not yet received a claim form does not mean that a claim has not been made. Please read FAQ (19) for further information about what to do if you become aware that a claim has been made against your business but the time limit for sending the response has already expired.

(23) Can my case be decided on the available paperwork, without a hearing?

That is possible, but it will depend on the circumstances. Please refer to paragraph 20 of the Presidential Guidance and note what is said about Rule 60 of the Employment Tribunals Rules of Procedure 2013:

<https://www.judiciary.uk/wp-content/uploads/2015/03/Presidential-Guidance-ET-Covid19.pdf>

(24) I know that the ET Presidents said they were going to review the direction they issued about what was to happen, in light of the Covid-19 pandemic, to ET cases already listed for hearing. Have they done that?

Yes, they did this on 29 April 2020 and 29 May 2020. Following these reviews, that Direction remains in force in its current form. This means that hearings listed on or after 29 June 2020, unless already postponed as a result of a case management hearing, will remain in hearing lists; further details are set out in the ‘road map’ appended to these FAQs. During the Covid-19 pandemic, arrangements will be made to contact parties/representatives in these listed cases so that an assessment can be made by an Employment Judge of the most appropriate method of conducting the hearing (for example, that could be entirely in-person, entirely by remote means, or a combination of such methods). At that time any special measures which require to be put in place in connection with the conduct of the hearing will also be considered. Parties remain at liberty to make any application to the Tribunal that they consider appropriate at any time.

(25) I am concerned about attending a hearing that has been fixed to take place in person at an HMCTS building. What has HMCTS done to make the building as safe as possible?

A risk assessment will have been done before any building is used for tribunal hearings. HMCTS has issued information about these risk assessments: you can see the process that is used by looking at the ‘assessment tool’. It can be viewed at this web page (scroll down to ‘assessing and managing coronavirus risk’):

<https://www.gov.uk/guidance/coronavirus-covid-19-courts-and-tribunals-planning-and-preparation>

Appendix 1: road map

A ‘road map’ for listing and hearing cases in the Employment Tribunals June 2020 to December 2020

Introduction

The Presidents carried out a second review of their Listing Direction on 29 May 2020. The outcome of that review is set out in the answer to FAQ (24).

The Presidents want to be as transparent as they can be about their broad outline plan over the next few months when it comes to the listing and hearing of various types of cases which can be presented to Employment Tribunals. They are calling their outline plan a ‘road map’. This is because road maps provide a possible route to get to a destination but cannot possibly show all the hurdles one might unexpectedly face in getting to the destination nor all the detours that might have to be taken on the journey. They also wish to emphasise that:

- access to justice, the delivery of a fair hearing and the safety of all who use the Employment Tribunals remain their priorities;
- it is not possible for their plan to deal with every type of case or every situation that may arise; and
- this outline plan should be read in conjunction with Practice Directions, Presidential Guidance and other information located at the web links in Appendix 2.

It is very important to note that delivery of the outline plan depends on many matters outside of judicial control. Furthermore, the ability to put in place the support measures needed to deliver the plan is likely to vary across Great Britain with some areas, for example, having a greater percentage of staff and hearing rooms available than others. Because the plan depends on matters outside of the Presidents’ control, it is, in some respects, aspirational.

The plan proceeds on the basis that, from the beginning of June 2020, there will be some increase in the availability of staff who will be able to work in tribunal offices (albeit not a uniform increase across all parts of Great Britain) and improved means to conduct remote video hearings on a national scale (in the form of licences for approximately 150 Cloud Video Platform (CVP) hearing rooms).

Practice Directions on remote hearings will be issued shortly in both England and Wales and in Scotland. They will deal with a range of matters including the conduct of remote hearings, the expectations of parties/representatives and public access to such hearings. Both will be supplemented by guidance which will be updated as experience grows of conducting hearings remotely.

Definitions

In this outline plan:

- “short track” refers to claims for unpaid money such as wages, holiday pay, redundancy pay, notice pay and the like. They are usually heard by an

Employment Judge sitting without non-legal members and are usually listed for 1-2 hours;

- “standard track” refers to complaints of unfair dismissal. They are often heard by an Employment Judge sitting without non-legal members and many (but by no means all) of them are listed for 1-3 days; and
- “open track” refers to complaints about discrimination, detriments for blowing the whistle and the like. They are usually heard by an Employment Judge sitting with two non-legal members and are usually for 3 days or more.

The road map

The road map is divided into four phases: June; July/August; September/October; and November/December.

June 2020

In June, the Employment Tribunals will continue to focus on remotely conducted case management hearings, judicial mediations and hearings involving one or more of the priority jurisdictions listed at FAQ (10) above.

While many private hearings will still take place by telephone, an increasing number of them will be conducted using CVP, where a judge decides that a hearing using that platform is in accordance with the overriding objective. That will assist in enhancing both judicial and user familiarity with the CVP system.

Employment Judges will continue identifying cases where a public hearing is required, and which can appropriately be conducted remotely using CVP. At this stage, these are likely to be straightforward money claims where there is little or no disputed evidence, remedy hearings where there is little or no disputed evidence (or where a rule 21 judgment has been issued), and the determination of other applications for costs/expenses, reconsideration etc.

It is unlikely that many standard and open track cases will be heard in June remotely, unless they are of short duration or the resumption of part-heard hearings.

It is unlikely that any in-person hearings will take place in June, while the process continues for carrying out risk assessments of premises, although special arrangements may be made if there are exceptional circumstances which suggest that such a hearing is absolutely necessary.

In the first half of June, salaried Employment Judges will be trained in the use of CVP. In the second half of June, fee paid Employment Judges will begin training in the use of CVP, subject to cross-border/regional variation for logistical reasons.

Leadership judges will deliver engagement and familiarisation sessions on the use of CVP via user group meetings and the like.

July and August 2020

During July and August, Employment Tribunals will, in addition to the types of cases considered during June (including remote mediation and priority cases), seek to

determine standard track cases in greater numbers using CVP. Fee paid Employment Judges will be deployed in greater numbers. Regional Employment Judges (the Vice-President in Scotland) will, wherever possible, try to list for hearing in July and August those standard track cases, judged to be suitable to be heard remotely, that lost their original allocated dates in the period from late March to end June because of the Covid-19 pandemic.

To the extent that social distancing measures operate in tribunal venues that have been properly risk assessed, some in-person hearings will begin, and these are likely to begin with short track cases or preliminary hearings. It is difficult to say how many such hearings there will be, save that different parts of Great Britain/regions/offices will necessarily go at different paces due to variations in cross-border (or regional) health restrictions, continued variation in staff levels and availability of suitable hearing rooms.

There will be some hearings involving several participants. These are likely to take place on a hybrid basis with some of those involved attending in person and others attending remotely using CVP. This will continue to be the subject of discussion at case management hearings.

During July and August, possibly running into September, non-legal members will be trained in the use of CVP.

It is unlikely that many open track cases will be heard in July and August although, as non-legal members are trained, some hearings of shorter duration may begin to take place.

September and October 2020

From mid-September and into October, Employment Tribunals will, in addition to the types of cases considered during July and August (including remote mediation and priority cases), seek to determine open track cases in greater numbers using CVP, especially those cases of shorter duration.

The range of approaches available will include wholly in-person hearings (likely still to be relatively few due to social distancing measures), hybrid in-person/CVP hearings, or hearings taking place wholly using CVP. Again, due to variable resources, different parts of Great Britain/regions/offices will necessarily go at different paces.

November and December 2020

The Presidents see November and December as a period of consolidation, as the Employment Tribunals judiciary and staff, and the system's users, increase their familiarity with the use of remote hearing technology to maintain the administration of justice during a period of continued social distancing.

That approach will be reviewed in accordance with public health guidance in England, Wales and Scotland, recognising that restrictions may be relaxed or tightened according to circumstances.

General comments

The Presidents' hope is that, via this road map, a path can be found to maximise the number of hearings that can take place, taking advantage of remote hearing technology when it is in the interests of justice to do so, and incrementally returning the Employment Tribunals to full operational capacity.

Parties will always be able to provide their views on whether their case is suitable for a remote or hybrid hearing; they will be able to do this at a case management hearing or upon application to the tribunal. The Presidents want to take this approach consensually, and they wish to ensure that remote hearing technology enhances rather than undermines access to justice; their view is that technology should be the servant of justice, not its master. To that end, guidance will be issued on the factors to be considered when deciding whether a remote hearing is appropriate in a particular case, which is and will remain a judicial decision. A party's objections to its use will be taken into consideration.

The Presidents wish to point out, insofar as a return to in-person hearings is concerned, that HMCTS has issued material on the 'risk assessments' that have been conducted, or are being conducted, at venues at which tribunal hearings take place. The material includes the 'assessment tool'. It can be viewed at this web page (scroll down to 'assessing and managing coronavirus risk'):

<https://www.gov.uk/guidance/coronavirus-covid-19-courts-and-tribunals-planning-and-preparation>

Contingent factors

The Presidents' strategy must, in some respects, remain aspirational. This is because it is dependent upon continued public health guidance on responding to the pandemic (which may differ as between England, Scotland and Wales) and the ability of HMCTS to deliver in respect of the following areas:

- Increased staff numbers (this is especially pressing in the three London ET regions);
- The availability of trained staff to support video hearings;
- Continued provision of safe, clean and risk-assessed tribunal venues, with clear instructions on social distancing measures; and
- Dependable IT in the form of equipment for use by fee paid judicial office holders and continued support for CVP.

The Presidents recognise that HMCTS faces significant challenges and they, the Vice-President in Scotland and the Regional Employment Judges in England and Wales continue to work hard alongside them to facilitate access to justice during the pandemic.

1 June 2020

Appendix 2: web links in this document

Presidential Guidance in response to the Covid-19 pandemic:

<https://www.judiciary.uk/wp-content/uploads/2015/03/Presidential-Guidance-ET-Covid19.pdf>

Updated and amended Direction issued by the Presidents on the Covid-19 pandemic:

<https://www.judiciary.uk/wp-content/uploads/2013/08/ET-Covid-19-Direction-Amendment-23.3.20.doc>

<https://www.judiciary.uk/publications/employment-rules-and-legislation-practice-directions>
<https://www.judiciary.uk/publications/directions-for-employment-tribunals-scotland>

Case management agenda forms in England and Wales:

<https://www.judiciary.uk/wp-content/uploads/2013/08/empl-trib-agenda-for-case-management-at-prelim-hearing-20170810.pdf>

<https://www.judiciary.uk/wp-content/uploads/2013/08/empl-trib-agenda-for-case-management-at-prelim-hearing-20170810-2.doc>

Case management agenda forms in Scotland:

<https://www.judiciary.uk/publications/directions-for-employment-tribunals-scotland>

Guidance on mediation in England and Wales:

<https://www.judiciary.uk/wp-content/uploads/2013/08/presidential-guidance-rule-3-adr-20180122.pdf>

Guidance on mediation in Scotland:

<https://www.judiciary.uk/wp-content/uploads/2014/08/employment-tribunals-scotland-practice-direction-2.doc>

Government list of priority courts:

<https://www.gov.uk/government/news/priority-courts-to-make-sure-justice-is-served>

HMCTS planning for the Covid-19 pandemic (including the risk assessment tool):

<https://www.gov.uk/guidance/coronavirus-covid-19-courts-and-tribunals-planning-and-preparation>

The judiciary's response to the Covid-19 pandemic:

<https://www.judiciary.uk/coronavirus-covid-19-advice-and-guidance>

Presidential Guidance on the presentation of claims in England and Wales:

<https://www.judiciary.uk/wp-content/uploads/2013/08/Presidential-Practice-Direction-Presentation-of-Claims-England-Wales.pdf>

Presidential Guidance on the presentation of claims in Scotland:

<https://www.judiciary.uk/wp-content/uploads/2015/03/presidential-practice-direction-scotland-presentation-of-claims.pdf>

HMCTS guidance on telephone and video hearings:

<https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak>