



COURTS AND
TRIBUNALS JUDICIARY

**JUDGE M SUTHERLAND WILLIAMS
PRESIDENT
HEALTH, EDUCATION AND SOCIAL CARE CHAMBER**

PRESIDENTIAL GUIDANCE NOTE No 1 of 2023:

**RECORDING OF HEARINGS IN THE
HEALTH, EDUCATION AND SOCIAL CARE CHAMBER
AND TRANSCRIPTION OF RECORDINGS**

1. In this Presidential Guidance:
 - references to numbered rules are to the rules so numbered in the Tribunal Procedure (First-tier Tribunal)(Health, Education and Social Care Chamber) Rules 2008;
 - “HESC” means Health, Education and Social Care Chamber;
 - “HMCTS” means His Majesty’s Courts and Tribunals Service;
 - “recording” means an audio, visual or audio-visual recording on any medium from which a single image, a moving image or any sound may be produced or reproduced, or the making of any such recording, and “record” and “recorded” shall be construed accordingly;
 - “transcript” means a document which sets out in typescript, in whole or in part, what has, or appears to have, been said as captured in a recording, and ‘transcribed’ shall be construed accordingly.
2. The Tribunals, Courts and Enforcement Act 2007 Schedule 4 Part 1 paragraph 7 provides that the Chamber President is to make arrangements for the issuing of guidance on changes in the law and practice as they relate to the functions allocated to the Chamber.
3. This guidance relates to the arrangements for recording of hearings and transcription of recordings in the Health, Education and Social Care Chamber. Tribunals must have regard to this guidance, but they are not bound by it.

Making of recordings

4. Unless the Tribunal directs otherwise, HMCTS will usually make audio recordings of hearings in HESC, other than in mental health cases, where the technical facility exists to do so and where such recordings can be securely retained. This applies to all hearings, whether they are preliminary hearings or full hearings, whether they are held in public or private and whether they are held in person or remotely. Deliberations held in private between a judge and non-legal members, when a full tribunal panel is sitting, will not be recorded.
5. More particularly:
 - 5.1 Hearings held in person can only be recorded where suitable equipment is installed in hearing rooms. There are some venues in England and Wales where, because of co-location with court jurisdictions, the tribunal may use courtrooms with the “DARTS” recording system (and which will be used if available).
 - 5.2 The facility exists to record hearings held fully or partly remotely using the HMCTS Cloud Video Platform and the HMCTS Video Hearings Service and for those recordings to be securely retained. Consequently, it is expected that HMCTS will record such hearings. Although the facility exists to record hearings held on Microsoft Teams, those recordings cannot be securely retained by HMCTS; consequently, it is not expected that HMCTS will record such hearings.
 - 5.3 Previous recording experience shows that, occasionally, there will be a malfunction, which means that a recording cannot be made. If a recording cannot be made in respect of a hearing which otherwise would be recorded, the hearing will be delayed by no more than fifteen minutes to allow HMCTS to restore recording functionality. If that functionality cannot be restored within fifteen minutes, the hearing will proceed for that session, and for any further session during which the malfunction continues, without a recording being made.

Prohibition on recording

6. No party, representative, witness or member of the press or public may record a hearing without the permission of the Tribunal, which will only be given in exceptional circumstances and for which supporting evidence has been provided. It is envisaged those circumstances will be where the making of such a recording is necessary in the interests of justice to ensure the effective participation of a vulnerable party or witness or by way of reasonable adjustment for a person with a disability. If such permission is given, the Tribunal may impose any conditions, including as to deletion of the recording, as it sees fit.
7. Any person who wishes to make a recording of a hearing should make an application to the Tribunal as soon as possible. Making a recording without permission is a contempt of court punishable in law.

Access to recordings

8. Access to audio recordings is given to the judiciary in certain limited circumstances, such as in connection with appeals. In contrast, no party, representative, witness or member of the press or public will be provided with a copy of any audio recording made by HMCTS, save that the Tribunal may give permission to a party or representative to listen to all or part of an audio recording of a hearing in exceptional circumstances and for which supporting evidence has been provided.
9. It is envisaged those circumstances will be where it is necessary in the interests of justice to ensure the effective participation of a vulnerable party or witness or by way of reasonable adjustment for a person with a disability. In such circumstances, the Tribunal will be entitled to consider why an application was not made before the hearing and what steps the party took in advance of the hearing to ensure a handwritten record was kept.
10. It would not be an exceptional circumstance for a party or representative to listen to an audio recording to understand better why the Tribunal reached the decision it did (since that will be apparent from the written reasons for its decision) or to search for a ground of appeal or complaint. Parties should, as they have previously done, keep a handwritten record of the proceedings and anything said in order to frame any onward application or appeal.
11. Any party or representative exceptionally given permission to listen to all or part of an audio recording of a hearing will do so under supervision on HMCTS premises or in the mental health jurisdiction, in hospital premises if unrepresented. They may take notes but they may not copy the audio recording. Other parties or their representatives will be invited to attend at the same time and on the same conditions. The Tribunal may impose any further conditions as it sees fit.

Transcripts

Transcripts at public expense

12. Having regard to (a) the ability of the Upper Tribunal to listen to, or request a copy of, all or part of an audio recording, or order the preparation of a transcript at public expense, in connection with an appeal and (b) the scheme for the production of written reasons under rules 30 and 41, the First-tier Tribunal will only order the provision to a party or representative of a transcript at public expense, in whole or in part, in exceptional circumstances and for which supporting evidence has been provided.
13. It is envisaged those circumstances will be where the provision of a transcript at public expense, in whole or in part, is necessary in the interests of justice to ensure the effective participation of a vulnerable party or witness or by way of reasonable adjustment for a person with a disability, and which cannot otherwise be addressed by the production of written reasons (or, exceptionally,

by giving them permission to make their own recording or to listen to a recording made by HMCTS).

14. It would not be an exceptional circumstance that the period for seeking permission to appeal or review under rules 45-49 has elapsed.

Recording extemporised judgments

15. When a judge announces a tribunal's decision with reasons orally, pursuant to rule 30 or 41, those reasons will be recorded, as they are delivered, on a dictation device or other recording equipment as provided by HMCTS.
16. The decision announced orally may, at the judge's request, be transcribed and provided to the judge to assist them in drafting the written reasons for the decision. The written reasons will stand as the authoritative statement of the Tribunal's reasons for its decision, which may develop or differ from the reasons given orally.

JUDGE M SUTHERLAND WILLIAMS

PRESIDENT OF THE HEALTH, EDUCATION AND SOCIAL CARE CHAMBER

1 February 2023