



**Tribunals  
Judiciary**

**Judge Susan Walker**  
President  
Employment Tribunals  
(Scotland)



**Courts and  
Tribunals Judiciary**

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

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## **Presidential Practice Direction**

### **Recording of Employment Tribunal hearings and the transcription of recordings**

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1. Regulation 11 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 allows the Presidents to make Practice Directions about the procedure of Employment Tribunals in the area for which each President is responsible. This joint Practice Direction clarifies the practice and procedure concerning the recording of Employment Tribunal hearings in England, Wales and Scotland and the transcription of such recordings. It should be read in conjunction with the accompanying Presidential Guidance.

#### **Definitions**

2. In this Practice Direction:
  - 2.1 “ET Rules” means the Employment Tribunals Rules of Procedure, as set out at Schedule 1 to the Regulations;
  - 2.2 “HMCTS” means His Majesty’s Courts and Tribunals Service;
  - 2.3 “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;
  - 2.4 “leadership judge” means a President, Vice President or Regional Employment Judge;
  - 2.5 “Regulations” means the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013;
  - 2.6 “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 “transcription” and “transcribed” shall be construed accordingly; and

- 2.7 “tribunal” means an Employment Judge (including a leadership judge) sitting alone or with one or two non-legal members in accordance with section 4 of the Employment Tribunals Act 1996 and regulations 8 and 9 of the Regulations.

### **General principles**

3. Subject to the exceptions identified in paragraph 4, HMCTS will make audio recordings of all hearings where the technical facility exists to do so and where such recordings can be securely retained.
4. The exceptions are: HMCTS will not record hearings held under rules 3 and 53(1)(e) of the ET Rules; and HMCTS will not record hearings where an order has been made under rule 94 of the ET Rules.
5. Where an audio recording has been made, it will constitute the record of proceedings. Where an audio recording has not been made, the Employment Judge’s notes will constitute the record of proceedings. If an audio recording is made but then malfunctions in respect of any part of a hearing, the Employment Judge’s notes will constitute the record of proceedings only for that part for which no audio recording exists.
6. HMCTS will not make audio-visual or visual recordings of any hearings.
7. Audio recordings are Crown copyright. The use, capture, re-editing or redistribution of the material in any form without permission could attract liability for breach of copyright and/or defamation, in addition to the possibility of contempt proceedings<sup>1</sup>.
8. HMCTS is responsible for the storage, retention and destruction of audio recordings and any transcripts of audio recordings that have been made, and will act in accordance with the terms of the Record Retention and Disposition Schedule applicable to Employment Tribunals<sup>2</sup>.
9. Rule 5 of the ET Rules applies to any time limit specified in this Practice Direction.

### **Prohibition on recording and broadcasting**

10. No party, representative, witness or member of the press or public may record or broadcast a hearing without the permission of the tribunal, which will only be given in exceptional circumstances as set out in Presidential Guidance. To do so without permission in the case of an audio recording will be a contempt, and to do so without permission in the case of an audio-visual or visual recording will be both a contempt and an offence<sup>3</sup>.

### **Access to recordings**

11. The Judicial Conduct Investigations Office, a leadership judge, or any other judge who requires to do so, may request a copy of and/or listen to all or part of an audio recording in connection with the investigation and/or determination of a complaint about judicial misconduct.

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<sup>1</sup> Use in judicial proceedings is permitted by [section 45 of the Copyright, Designs and Patents Act 1988](#).

<sup>2</sup> <https://www.gov.uk/government/publications/record-retention-and-disposition-schedules>

<sup>3</sup> See [section 41 of the Criminal Justice Act 1925](#) (for England and Wales), [section 9 of the Contempt of Court Act 1981](#) and [section 85B of the Courts Act 2003](#) (in respect of remote proceedings).

12. A tribunal may listen to all or part of an audio recording during the course of a hearing or when preparing its judgment.
13. Any member of the tribunal may, with the consent of a leadership judge, listen to an audio recording for any purpose connected to the performance of their judicial duties (such as responding to a complaint about judicial misconduct).
14. No party, representative, witness or member of the press or public will be provided with a copy of any audio recording of a hearing made by HMCTS or given permission to listen to it separately. This is to minimise the risk of misuse.
15. In exceptional circumstances as set out in Presidential Guidance, a tribunal may give permission to a party or representative to listen to all or part of an audio recording of a hearing. Any application to listen to an audio recording must be made within six months of the final date of the hearing that was recorded.

### **Transcripts – general**

16. Rules 60 to 69 of the ET Rules apply to the judgments and decisions made by the tribunal and the reasons for them. The written judgment of the tribunal (including any written reasons provided) is the definitive expression of the tribunal's judgment<sup>4</sup>. Accordingly, if a party wishes to request written reasons for a judgment given orally, they must do so by requesting them in accordance with rule 62(3) of the ET Rules and not by requesting a transcript of any audio recording that has been made.
17. If any non-party, such as a member of the press or public, wishes to see a judgment or any written reasons that have been provided, they can inspect the register of judgments maintained by the Lord Chancellor under Regulation 14 of the Regulations, rather than request a transcript.
18. A tribunal may order the preparation of a transcript of all or any part of a hearing at public expense, including for the purposes of preparing written reasons of an oral judgment.
19. Where a transcript has been produced, it is not the record of proceedings; see paragraph 5 above.

### **Requests for transcripts**

20. Any party (or representative of a party) who wishes to obtain a transcript of the whole or any part of an audio recording of a hearing in which they participated must do so by completing the form produced by HMCTS for this purpose (Form EX107). The completed form should be sent to the Employment Tribunal office from which the hearing was administered. The form need not be copied to the other side. This should be done within six months of the final date of the hearing in respect of which the transcript is sought. They will be required to pay the charges authorised by any scheme in force unless provision of a transcript at public expense has been approved. A transcript may be sought whether the hearing was held in public or in private. Any transcript which is produced will not include any oral judgment or reasons given at the hearing<sup>5</sup>.

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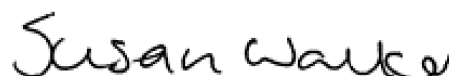
<sup>4</sup> See *Kumar v. MES Environmental Limited* [2022] EAT 60, paragraphs 37 to 39.

<sup>5</sup> See *Kumar*, *ibid.*

21. A request for a transcript will not by itself alter any time limit in the ET Rules.
22. Any non-party, such as a member of the press or public, who wishes to obtain a transcript of the whole or any part of an audio recording of a hearing must do so by completing the form produced by HMCTS for this purpose (Form EX107). The completed form should be sent to the Employment Tribunal office from which the hearing was administered. This should be done within six months of the final date of the hearing in respect of which the transcript is sought. However, they can only request a transcript for the parts of a hearing held in public. They will be required to pay the charges authorised by any scheme in force. Any transcript which is produced will not include any oral judgment or reasons given at the hearing.
23. Transcripts will not be subject to any check, verification or approval by an Employment Judge (including a leadership judge) or any non-legal member prior to their release. However, a member of HMCTS administrative staff or a legal officer may review and amend the transcript before it is released for two limited purposes:
  - 23.1 To ensure that the transcript is of the hearing itself and not of parts immune from disclosure (such as the deliberations in private between the Employment Judge and non-legal members; discussions between the parties in the hearing room before the hearing has commenced, after it has concluded or during any adjournment; or the oral judgment and reasons); and
  - 23.2 Where it has been requested by a non-party, to ensure that the transcript is of the public parts of the hearing only and/or to ensure compliance with rule 50 of the ET Rules. In that connection, the person reviewing the transcript (whether a member of HMCTS administrative staff or a legal officer) may consult an Employment Judge (including a leadership judge).
24. Misuse of a transcript may constitute unreasonable behaviour for the purposes of rules 37(1), 76(1) and 80(1) of the ET Rules and, further, may constitute an offence under sections 10B(2), 11(2) and 12(3) of the Employment Tribunals Act 1996 and/or a contempt.
25. This Practice Direction has been approved by the Senior President of Tribunals and the Lord Chancellor under section 7A(2C) of the Employment Tribunals Act 1996. It has effect from 20 November 2023.



Judge Barry Clarke  
President



Judge Susan Walker  
President