



**Tribunals
Judiciary**

Judge Susan Walker
President
Employment Tribunals
(Scotland)



**Courts and
Tribunals Judiciary**

Judge Barry Clarke
President
Employment Tribunals
(England and Wales)

Presidential Guidance

Recording of Employment Tribunal hearings and the transcription of recordings

1. In this Presidential Guidance, the following terms have the same meaning as given in our accompanying Practice Direction on the recording of Employment Tribunal hearings and the transcription of recordings: “ET Rules”; “HMCTS”; “recording”; “Regulations”; “transcript”; and “tribunal”. This Guidance should be read in conjunction with that Practice Direction.
2. Rule 7 of the ET Rules allows the Presidents to publish guidance as to matters of practice and as to how the powers conferred by the ET Rules may be exercised. Such guidance must be published in an appropriate manner to bring it to the attention of claimants, respondents and their advisers. This guidance concerns the recording of Employment Tribunal hearings and the transcription of such recordings. Employment Tribunals must have regard to this guidance, but they are not bound by it.

Recording and transcription generally

3. The Employment Tribunals north and south of the border are provided with administrative support by HMCTS. Provision of recording equipment and a system for transcribing recordings is the responsibility of HMCTS.
4. By our accompanying Practice Direction, with the agreement of HMCTS (but subject to paragraph 5 below), audio recordings will henceforth be made of all Employment Tribunal hearings. This is so whether they are preliminary hearings or full hearings, or hearings for case management, remedy, costs (expenses in Scotland) or reconsideration, and whether they are held in public or private, and whether they are held in person or remotely (or a hybrid combination). There are only two exceptions: hearings held under rules 3 and 53(1)(e) of the ET Rules (i.e., for the purposes of judicial mediation and other alternative dispute resolution) and hearings where there is an order in place under rule 94 (i.e., in the interests of national security).

5. As our Practice Direction states, HMCTS will only make audio recordings where the technical facility exists to do so and where the recording can be securely retained. More particularly:
 - 5.1 Hearings held in person can only be recorded where suitable equipment is installed in hearing rooms. Audio recordings of in-person hearings can only be transcribed properly where there is a suitable array of microphones capable of identifying different speakers at the main locations in the room (being, at a minimum, the bench, the tables used by each representative, and the witness table).
 - 5.2 There are some Employment Tribunal venues in England and Wales where, because of co-location with court jurisdictions, the Employment Tribunals can use courtrooms with an existing digital audio recording system installed (and which will be used if available)¹. These are currently Bristol, Southampton, Mold, Sheffield, Newcastle, Hull and Liverpool, and one hearing room in Birmingham.
 - 5.3 Where an existing digital audio recording system is installed, functioning, and available to be used by the Employment Tribunals, and trained HMCTS staff are on hand to operate it, it should be used.
 - 5.4 However, most hearing rooms used by the Employment Tribunals have no formal recording equipment installed. It can be possible to “join” a Cloud Video Platform (“CVP”) room to an in-person hearing to act as a proxy recording device, but only where sufficient microphones are available and there is an accompanying screen and camera. HMCTS have agreed to investigate adopting this approach nationally and to investigate other recording alternatives to give full effect to our Practice Direction.
 - 5.5 HMCTS has agreed to record all hearings held fully or partly remotely using the BT MeetMe conferencing service, CVP and/or the Video Hearings service (“VH”). There is a technical facility in each platform to record the hearing and the resulting audio recordings can be securely retained. The technical facility exists to record hearings held on Microsoft Teams, but those recordings cannot be securely retained by HMCTS. Consequently, where Microsoft Teams is used as a back-up platform to CVP or VH, HMCTS will not record such hearings.
6. It is not the responsibility of the tribunal to operate recording equipment or to arrange for the storage of recordings. It is the responsibility of HMCTS.

Malfunctions

7. Experience shows that, occasionally, there will be a malfunction, with the effect that an audio recording cannot be made or that an audio recording which has been made cannot be located.
8. If an audio recording cannot be made in respect of a hearing which otherwise should be recorded, the hearing will be delayed by no more than five minutes to allow HMCTS to restore recording functionality. If that functionality cannot be restored within five minutes, the hearing will proceed for that session, and for any

¹ In the Crown Court, this is the Digital Audio Recording, Transcription & Storage (“DARTS”) system. In the civil courts in England and Wales, it is the Digital Audio Recording (“DAR”) system.

further session during which the malfunction continues, without an audio recording being made.

9. Any failure in connection with audio recording does not affect the validity of the hearing.

Prohibition on recording

10. By our Practice Direction, 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 as set out in Presidential Guidance. Those circumstances are 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, and for which supporting evidence has been provided². Any such recording that a tribunal has permitted to be made in this way does not, however, constitute the record of proceedings; only the audio recording made by HMCTS (or, in the absence of such an audio recording, the Employment Judge's notes) constitutes the record of proceedings³.
11. Any person who wishes to make their own recording of a hearing should make an application to the tribunal as early as possible in the proceedings. The response to such an application is a judicial decision, in the form of a case management order under rule 29 of the ET Rules. Such a decision will generally be taken on the papers and without a hearing⁴. The tribunal may ask for supporting evidence to be provided, and the tribunal may seek comments from the other party (which may require disclosure of any medical evidence relied upon). If such permission is given, the tribunal may impose any conditions, including as to subsequent deletion of the recording, as it sees fit⁵.
12. Unless permitted by the tribunal under paragraphs 10 and 11 above, a tribunal will not permit the parties to record the hearing themselves simply because the technical facility for HMCTS to do so does not exist. This is because HMCTS must retain control of all arrangements for making and storing recordings.

Access to recordings

13. By our Practice Direction, access to audio recordings is given to the judiciary in certain limited circumstances. 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. This is to minimise the risk of misuse. However, by our Practice Direction, a 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 as set out in Presidential Guidance. Those circumstances are 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, and for which supporting evidence has been provided.
14. Any party or representative given permission to listen to all or part of an audio recording of a hearing will ordinarily be expected do so under supervision and only

² The EAT identified a non-exhaustive list of matters to consider at paragraph 27e of *Heal v. University of Oxford* [2020] ICR 1294; see also paragraph 49b of *Heal*.

³ See paragraph 49d of *Heal*.

⁴ Although a tribunal may order that the matter be dealt with at a final or preliminary hearing; see paragraph 27d of *Heal*.

⁵ See paragraph 49c of *Heal*.

on HMCTS premises. An exception may be made to enable a party to listen remotely where that is necessary to ensure the effective participation of a vulnerable party or by way of reasonable adjustment for a person with a disability, and for which supporting evidence has been provided. When listening to a recording, a person may take notes but they may not copy the audio recording. The tribunal may impose any further conditions as it sees fit.

15. The response to an application to listen to all or part of an audio recording (including a decision about the arrangements for how it will be done) is a judicial decision in the form of a case management order under rule 29 of the ET Rules. Such a decision will generally be taken on the papers and without a hearing. The tribunal may ask for supporting evidence to be provided, and the tribunal may seek comments from the other party (which may require disclosure of any medical evidence relied upon).
16. Supervision when listening is provided by an HMCTS official, not by a member of the tribunal.

Transcripts

17. By our Practice Direction, any party, representative, witness or member of the press or public who wishes to obtain a transcript of the whole or any part of an audio recording of a tribunal hearing (save for the part where an oral judgment and reasons were delivered) must do so by completing the form produced by HMCTS for this purpose, which is Form EX107⁶.
18. A party or representative may request a transcript of the audio recording of a hearing whether it was held in public or private. Neither the completed form nor any evidence accompanying the form needs to be copied to the other side.
19. A non-party can only request a transcript for the parts of a hearing held in public.
20. The requester must pay the charges authorised by any scheme in force, unless an order has been made for the provision of the transcript, in whole or in part, at public expense. The charges are the same as those that apply in the civil courts from time to time⁷.
21. A transcript is not provided at public expense where the request has come from a non-party, such as a member of the press or public.
22. Where the request has come from a party (or the representative of a party), a transcript is only prepared at public expense 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, and for which supporting evidence has been provided. Form EX105⁸ should not be used.
23. The response to an application for a transcript at public expense is a judicial decision in the form of a case management order under rule 29 of the ET Rules. Such a decision will generally be taken on the papers and without a hearing. The tribunal may ask for supporting evidence to be provided, and the tribunal may seek comments from the other party (which may require disclosure of any medical evidence relied upon). The tribunal may decide that the interests of justice are

⁶ Available to download here: <https://www.gov.uk/government/publications/order-a-transcript-of-court-or-tribunal-proceedings-form-ex107>.

⁷ These are presently set out in Guidance Note EX107GN, at the same link given in footnote 6.

⁸ <https://www.gov.uk/government/publications/apply-for-help-with-court-transcript-costs-form-ex105>

served by arranging for a portion of the audio recording, rather than the audio recording in its entirety, to be transcribed at public expense.

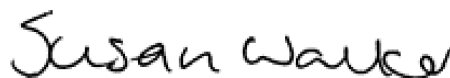
24. Form EX107 allows a requester to identify whether they are requesting a duplicate transcript. If a transcript has already been produced following an earlier request, HMCTS will send the latest requester a duplicate without levying a charge, subject to paragraph 23 of the Practice Direction. Form EX107 also allows parties to share the cost (via a split invoice) when they both submit requests for transcription.
25. Where HMCTS has made an audio recording of that part of a hearing where an oral judgment and reasons were delivered, a tribunal may use that recording in place of a dictation device or dictation software as the basis for preparing any written reasons requested under rule 62(3) of the ET Rules. Whether that recording is sent to a typist or a transcription provider is a matter for HMCTS.
26. The Practice Direction refers to misuse of a transcript. Examples of what may constitute misuse include the following: (a) a party (or representative of a party) who has obtained a transcript of a hearing (or part thereof) that was held in private forwards it to any individual who was not entitled to be present at such a hearing; (b) a party (or representative of a party) who has obtained such a transcript forwards it to a person thereby identifying any individual in respect of whom an anonymisation order has been made; and (c) a party (or representative of a party) publishes an altered or misleading version of the transcript, including by placing it online or on social media (which may also attract civil liability).

Miscellaneous

27. Nothing in our Practice Direction or this Presidential Guidance is intended to constrain the ability of parties to agree, with the permission of the tribunal, to engage a live transcription service from a commercial provider. We envisage that this would only arise for consideration in the complex, high-value litigation.
28. Nothing in our Practice Direction or this Presidential Guidance has any bearing on how, if at all, the Employment Appeal Tribunal makes use of audio recordings or transcripts of Employment Tribunal hearings in the context of an appeal. That is exclusively a matter for the Employment Appeal Tribunal⁹.
29. This Presidential Guidance has effect from 20 November 2023.



Judge Barry Clarke
President



Judge Susan Walker
President

⁹ See *Kumar v. MES Environmental Limited* [2022] EAT 60, paragraphs 34 and 35, and the [Practice Direction of the Employment Appeal Tribunal 2023](#), especially paragraph 7.10.2b and paragraphs 8.10.4 to 8.10.8.