



Courts and
Tribunals Judiciary

JUDGE BARRY CLARKE

PRESIDENT | EMPLOYMENT TRIBUNALS (ENGLAND & WALES)

7 July 2023

To: All members of the national user group
Employment Tribunal (England & Wales)

Dear colleagues

Presidential Guidance on Alternative Dispute Resolution

I wish to draw to your attention my new Presidential Guidance on Alternative Dispute Resolution, which has been issued today. As was discussed at a previous meeting of the national user group, the Employment Tribunals jurisdiction in England and Wales now has a dedicated section of the judiciary website [here](#). There is a link on that page to all associated Rules, Orders, Practice Directions and Guidance. The new guidance is on the page dedicated to Practice Directions and Presidential guidance, which is [here](#).

As well as refreshing jurisdictional guidance generally on ADR, including judicial mediation, the new Guidance places on a formal footing a pilot that has been undertaken in Birmingham Employment Tribunal since July 2020. That pilot was itself the innovation of Regional Employment Judge Lorna Findlay. The leadership judiciary of the Employment Tribunals consider that the pilot has been a success. This new form of ADR hearing will henceforth be known as a “**dispute resolution appointment**”. Standard documents are being updated to include reference to this new type of hearing.

While this is the first step taken by the Employment Tribunals into the field of non-consensual alternative dispute resolution, it is not "mandatory ADR", and it would be misleading for it to be described as such. It is the appointment that parties are required to attend; there is no outcome that they are compelled to accept. The guidance alludes to the possibility that non-participation could sound in costs, but the Birmingham pilot has shown that this is unlikely to be a problem; it has proved to be popular with users in the Midlands, and the

experience has been that parties do attend such appointments and welcome the clarity that they bring.

In contrast to judicial mediation, this form of ADR intervention takes place later in the proceedings, after exchange of witness statements, when a more informed evaluation of the merits of the case can be given. The focus is very much on the longer cases, which contribute extensively to long waiting times in the Employment Tribunals, created listing difficulties (as it is not possible to “backfill” list at short notice when long cases settle the day before or the morning of the hearing), and are overrepresented in our outstanding stock of cases.

The Guidance refers, at paragraph 47, to the fact that all forms of ADR hearing will not be recorded and will not be available for transcription. In isolation, that comment may appear a little odd; however, in due course, it will be read alongside the pending Practice Direction and Presidential Guidance on recording and transcription, which are still going through various governance stages, but should be available for promulgation very shortly.

Please feel free to circulate the link to the new ADR Guidance to your members, users and constituents.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Barry Clarke', with a long horizontal flourish extending to the right.

Judge Barry Clarke
President