



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

### **PRACTICAL GUIDANCE FOR VIDEO HEARINGS**

- 1 The following practical guidance is for parties in relation to hearings that take place by video instead of face to face in a tribunal room (a face to face hearing is sometimes referred to as an “in-person hearing”). Sometimes a hearing will take place with some participants in the hearing room and some participants joining by video. This is called a “hybrid” hearing.

#### **Joining a video hearing**

- 2 It is for the party to ensure that they (and any representative or witnesses) have the necessary equipment and internet connection to enable them to join a video hearing. The government website ([www.gov.uk/guidance/what-to-expect-when-joining-a-telephone-or-video-hearing](https://www.gov.uk/guidance/what-to-expect-when-joining-a-telephone-or-video-hearing)) provides information on how to self-test if you can join a video hearing.
- 3 It is possible to join a video hearing using a smartphone, tablet, laptop or PC. However, joining a video hearing in the Employment Tribunal using a mobile phone is likely to present challenges, especially if the device is also being used to view documents. If it is not possible to join the hearing in any other way, it is recommended that any file of documents is printed out or downloaded onto another device to access during the hearing.
- 4 The Tribunal may offer a test call to ensure that participants will be able to connect to the remote hearing. If this is offered, it is strongly recommended that participants take up the offer.

#### **When a video hearing will be listed**

- 5 In the claim form and in the response form there is an opportunity for a party to indicate if they are unable to take part in a telephone or video hearing. If this box has not been ticked, any hearing of up to a day in length, including case management hearings, will usually be listed to take place by video and longer hearings will usually be listed to take place in person. However, depending on the circumstances of the case, a Judge may direct differently or may agree to a hybrid hearing.
- 6 The decision will be made taking account of the overriding objective in rule 3 of the [Employment Tribunals Rules of Procedure 2024](#) to deal with cases “fairly and justly”. A key consideration will be whether the parties and witnesses will be able to participate fully in the hearing.

- 7 Relevant circumstances would include, but are not limited to:
- (i) the views of the parties
  - (ii) the location of those giving evidence
  - (iii) whether a party is a party litigant
  - (iv) if any party, representative or witness is a vulnerable person.
- 8 If a preliminary hearing for case management has been listed, this will be an opportunity for parties to give their views about whether any subsequent hearing should be in person, by video or hybrid.
- 9 If a hearing has been listed by video without consultation with parties (including a preliminary hearing for case management) and a party is concerned that they (or their representative or any witness) may not be able to participate by video, they should contact the Tribunal as soon as possible, explaining who is affected and what the difficulties are.
- 10 If a party, or their representative, wishes to request that any hearing takes place, in whole or in part, by video instead of in person, they should contact the Tribunal and make that application.

### **Joining a video hearing**

- 11 Parties may be provided with joining instructions for the video hearing in the notice of hearing. Otherwise, these will be provided a day or two before the hearing. If these have not been provided by the day before the hearing, parties should contact the Tribunal.
- 12 On the day of the hearing the parties and their representatives should join the hearing 15 minutes before the scheduled start time in case there is any delay in establishing a connection. There may be a delay in all participants being admitted to the hearing. They will hear a recorded message saying “*Waiting for the conference host to join*”. This is normal and participants should not disconnect. They will be admitted in due course.
- 13 Once all the participants have successfully accessed the hearing, the clerk will invite the judge and non-legal members (if the Tribunal is sitting as a panel of three) to join the hearing.

### **Documents**

- 14 Parties will usually be advised in advance of the hearing how documents should be prepared and provided to the Tribunal. This will either be in the Notice of Hearing or in specific orders issued by a Judge, it is important that parties follow precisely the orders that have been given.

- 15 If no directions have been given prior to the hearing, parties should send documents they wish to rely on electronically to the Tribunal and other party or parties at least two working days prior to the commencement of the hearing.
- 16 If either party wishes the Tribunal to make an order for the disclosure of documents from another party, that should be applied for well in advance of the hearing.

### **Witnesses**

- 17 Each party is responsible for ensuring that any witness they intend to call is provided with details of how to connect to the hearing and that they have the necessary equipment to do that. Each party should also ensure that each witness has been provided with the documents to which they will be referred and that these documents are numbered in the same way as those provided to the Tribunal.
- 18 Parties should keep their witnesses informed of when they are likely to be called to give evidence and when they should connect to the hearing. They should ensure that they have contact details for the witnesses with them at the hearing so that if there are any changes in timing the witness can be contacted easily.

### **Preparing for the hearing.**

- 19 It is important that participants should be somewhere quiet and private without distractions and where they will not be disturbed for the duration of the hearing. They should be alone unless assistance from anyone else has been authorised by the Tribunal.
- 20 Background noise should be minimised as far as possible. Ideally sources of light should be in front of or directly above the participant so that their face can be seen clearly. Lighting from behind (such as a window) is to be avoided if possible.
- 21 If a participant intends to join by using a mobile device, such as a tablet, it must be positioned so that the camera is stable, still and producing a good image of the participant.
- 22 Only one device should be connected to the hearing in any one physical room to avoid interference. The use of headphones and headsets (including simple mobile phone headphones) also help to avoid echoes, feedback and other interference. Mobile phones should be switched off or set to silent unless they're being used to connect to the hearing or to communicate in a permitted manner with other participants.

### **Conduct during the hearing.**

- 23 Parties must bear in mind that even although the hearing is being conducted by video it is still a formal judicial process. Parties and all others playing a role in the hearing should behave and dress in an appropriate business-like manner just as they would were they to be attending a hearing in an ET hearing centre.
- 24 Once the hearing starts, microphones should be muted unless it is that person's turn to speak. The camera should remain switched on.
- 25 Parties and representatives should not enter mirror screen or share screen mode or send a document or attachment without seeking the Judge's permission.
- 26 The Judge will administer the oath or affirmation to witnesses in the usual way but there is no need for the witness to stand up. Holy books are not required to take the oath in Scotland.
- 27 Those appearing as witnesses should have access to the documents provided by the parties for the case, either in hard copy or electronically on another device, and should not have any notes or other documents in front of them unless approved by the Judge.
- 28 If a party or witness or other participant has a difficulty in seeing or hearing the proceedings that should be brought to the attention of the Judge, or if that fails by email to the clerk.
- 29 If a participant is cut off, they should re-join using the same link.
- 30 If a participant experiences connection difficulties, it is possible to connect to the hearing (audio only) using the telephone number provided on the joining instructions. This may incur a charge.
- 31 During breaks, the parties may be asked to mute their microphone and switch off their camera or they may be asked to disconnect and rejoin at a set time.
- 32 At the end of the hearing the Judge will disconnect from the hearing and the parties should then each disconnect.

### **Communication during the hearing**

- 33 There is a chat room facility for instant messaging between participants on the screen in the video hearing room. The contents can be seen by everyone in the room at the time. Parties and their representatives should agree before the hearing how they will communicate with each other during the hearing. This may be by text

message, WhatsApp or other means. **Such communication must not take place while a party is giving evidence (including any breaks during their evidence).**

- 34 **Any contact between a party (or their representative) and a witness during the hearing must relate only to the timing or other arrangements for attending the hearing and must not refer to the evidence to be given by the witness or which has already been given or may be given by any other witnesses.**
- 35 During the hearing, if a party or the representative wishes to say something to the judge or to object to something that someone else is seeing, they should hold up their hand or if the matter is urgent, they may “unmute” their microphone to speak.
- 36 Similarly, if a representative wishes a break in order to take instructions on any particular matter, they should hold up their hand or, if the matter is urgent, they may “unmute” their microphone to speak.

#### **Prohibition on recording**

- 37 **A video hearing must not be recorded by anyone (in whole or part) without the consent of the tribunal, nor should any part of the hearing be broadcast by anyone. This includes taking screenshots or saving any documents. Similarly, commenting on a hearing during its course using live text based communications without the consent of the Tribunal is not allowed.**
- 38 Section 9 of the Contempt of Court Act 1981 applies: recording any part of a hearing without consent may lead to legal proceedings against the person who has made the recording.
- 39 Most hearings are audio recorded by HMCTS. The recordings will be retained for up to 12 months, pending any appeal of further procedure in the case. [The Presidential Practice Direction on Recording and Transcription](#) explains more about this.

#### **Public access**

- 40 If a video hearing is a public hearing under the Rules of Procedure, this will be made clear on the Tribunal cause list (the list of hearings taking place each day) which is put on the internet. The cause list will provide information so that any member of the press or public who would like to observe the hearing can do so.
- 41 If the hearing is taking place by video, witness statements (if used) and the file of documents will be available for inspection by the public or the press at the Tribunal office that is dealing with the case. It is important to ensure that only documents that are going to be referred to by a witness are included in the file of documents. Where practicable, these documents will be available during the

hearing but for video hearings, it may not be possible to provide these until after the hearing has concluded.

- 42 Further details of how open justice is provided during a video hearing can be found is [here](#).