



# Courts and Tribunals Judiciary

## **Overarching Guidance Remote Participation**

*This is a living document, which will be kept under review, and is intended for electronic use.*

### **Purpose**

1. This document, issued on behalf of the Lady Chief Justice of England and Wales and the Senior President of Tribunals, sets out overarching guidance for remote participation across courts and tribunals.
2. The guidance will apply to any court or tribunal hearing which is fully remote or where there is any form of remote participation using either video or telephone. This guidance applies to all judicial office holders, both salaried and fee-paid, in courts and tribunals sitting in a court or tribunal below the High Court.
3. The guidance is intended to improve consistency in the use of remote hearings and remote participation. However, specific guidance will vary between jurisdictions and across case types.
4. All guidance should take into account the remote participation judicial principles. The principles provide a common set of principles for remote participation and can be found annexed to this guidance.

### **Guidance**

5. This guidance is intended to inform, as far as possible, a common approach to the creation of jurisdictional guidance on remote participation. Any jurisdictional guidance will need to take into account the following considerations:
  - a) High-level considerations
    - i. Access to justice requires litigants to have effective access to the court or tribunal which is deciding their case. Remote participation is one way in which the court or tribunal may provide access, but no litigant has a right nor does any court have a duty to provide remote or online access. The mode of access will be decided according to what the judge considers to be the interests of justice in the individual case.
    - ii. That said, there may be stronger or weaker arguments for remote hearings in certain kinds or categories of case. A court or tribunal may formulate general rules or policies about how it will deal with hearings in its jurisdiction.
    - iii. Responsibility for a decision on mode of hearing in any individual case will always rest ultimately with a judicial office holder responsible for that case.



## Courts and Tribunals Judiciary

- b) A given jurisdiction (courts and tribunals)
  - i. Will identify and publish any general policy, approach or starting point with regard to mode of hearing.
  - ii. May make a different order either of its own initiative or on application by any party.
  - iii. Will take reasonable steps to ensure court users can find out how to apply for a mode of hearing that is different from the norm or policy and make an appropriate and timely application.
  - iv. Will give court users a fair opportunity to take issue with a decision which it proposes to make or has made of its own initiative.
- c) A court or tribunal
  - i. Will decide the mode of hearing in a particular case according to what it considers to be in the interests of justice, bearing in mind the overriding objective of the jurisdiction in question.
  - ii. Will take account of all relevant circumstances, including:
    - A. The impact on fair access to justice for all participants.
    - B. Any impact the decision would have on open justice.
    - C. The resources available to the court or tribunal at the relevant time.
    - D. The impact on the business of the court or tribunal, including other cases with which it has to deal.
    - E. The timing of the application.
  - iii. Should give reasons for its decisions where the appropriate mode of hearing is in issue. It will not usually be necessary to give more than brief reasons, although in some circumstances a more detailed ruling may be required.



# Courts and Tribunals Judiciary

## Remote Participation

### Judicial Principles

1. This document sets out the overarching judicial principles for remote participation and provides a common set of principles for determining whether remote participation is appropriate.
2. The principles will apply to any court or tribunal hearing which is fully remote or where there is any form of remote participation using any video platform.
3. The principles are intended to improve consistency in the use of remote hearings and remote participation. However, specific guidance will vary between jurisdictions and across case types.

### Key Principles

4. Key principles of remote participation:
  - i. Whether to hold a hearing remotely or to enable participants to attend remotely is a judicial decision involving appropriate exercise of judicial discretion.
  - ii. The decision will always be based on the interests of justice.
  - iii. The decision will take into account the facilitation of fair access to justice for all.
  - iv. Court and tribunal users may be affected positively or negatively by remote participation. When considering remote participation, a court or tribunal should assess the likely impact on any participant, particularly one who is vulnerable.
  - v. It must be recognised that one size does not fit all and what works best may differ from jurisdiction to jurisdiction and from case to case.
  - vi. Decisions whether to hold a remote hearing may need to be taken on a case by case basis. However, it is generally in the interests of justice that there should be a broadly consistent approach within a jurisdiction.
  - vii. To aid consistency, courts and tribunals may formulate and publish general rules or policies for remote participation in their jurisdiction, provided always that discretion is retained to direct a different mode of hearing of the court/tribunal's own initiative or on application by a party.
  - viii. Decisions on remote participation should not be driven by the availability of resources. Proper resources should be provided according to the appropriate mode of hearing.
5. In order for the judiciary to adhere to the principles above, the judiciary must be provided with appropriate resources in order to undertake hearings involving remote participation, including (but not limited to) the following:
  - i. Suitable space in a court or tribunal building for conducting hearings.
  - ii. Proper equipment including sufficient screens and microphones etc.



## **Courts and Tribunals Judiciary**

- iii. A fully functioning, fit-for-purpose video platform.
- iv. The appropriate level of administrative and clerking support before, during and after a hearing.
- v. Appropriate recording facilities (having regard to the requirements of the particular jurisdiction).