Courts and Tribunals Judiciary

Judge Barry Clarke
President
Employment Tribunals
(England and Wales)

Presidential Guidance

On matters relating to the mode and listing of hearings; remote participation in hearings; and electronic documents

Introduction

1. A President of Employment Tribunals may issue guidance as to matters of practice and as to how the powers conferred by the Employment Tribunal Procedure Rules 2024 may be exercised[1]. This Presidential Guidance concerns the mode and listing of Employment Tribunal hearings in England and Wales, the principles governing remote participation by judges, members, parties and witnesses, and the use by parties of electronic documents. Tribunals must have regard to this guidance, but are not bound by it.

2. This Presidential Guidance supersedes the Practice Direction on remote hearings and open justice and the Presidential Guidance on remote and in-person hearings, which each took effect on 14 September 2020 in England and Wales in response to the challenges posed by the Covid-19 pandemic. They are hereby revoked. The provisions on open justice will be addressed in separate guidance.

3. This Presidential Guidance conforms with the judicial principles on remote participation, issued by the Lady Chief Justice and the Senior President of Tribunals, set out below:

   3.1 Remote Participation Overarching Guidance; and

   3.2 Judicial Remote Participation Principles.

Mode of hearing

4. An Employment Tribunal hearing may take place in person or remotely.

[1] Rule 8, Employment Tribunal Procedure Rules 2024.

5. Remote hearings use either video or telephone. A remote hearing may be fully remote (by which none of the participants is present in the hearing venue) or partly remote (by which some participants are present in a hearing venue but some join remotely). The mode may also change during a hearing, with all participants present in the hearing venue for one part of the hearing but some or all joining remotely for another part.

Default approaches when listing cases for a hearing

6. While decisions about the mode of hearing are judicial decisions, the default approaches set out below will apply when hearings are listed. This is to ensure the efficient despatch of business.

   6.1 Preliminary hearings listed for case management purposes will default to telephone or video.

   6.2 Preliminary hearings listed to determine a preliminary issue will default to video.

   6.3 Preliminary hearings to consider an application to strike out or for a deposit order will default to video.

   6.4 Applications for interim relief will default to video.

   6.5 Hearings held for the purposes of alternative dispute resolution (judicial mediation, judicial assessment and dispute resolution appointments) will default to video.

   6.6 Final hearings of short track claims (such as complaints about unpaid wages, unpaid notice pay, unpaid holiday pay and unpaid redundancy pay) will default to video.

   6.7 Hearings listed specifically to deal with applications for reconsideration or costs will default to video.

7. Where a default operates, it is for initial listing purposes only. In all cases, the parties will be able to express their views as to their preferred mode, for example in correspondence or at any preliminary hearing held for case management purposes. In all cases, it will be open to a judge to decide, in the interests of justice, that the default approach should not apply to a particular case.

8. There will be no default approach when listing final hearings of standard track claims (unfair dismissal) or open track claims (discrimination and whistleblowing detriment), or the associated hearings that are listed to decide remedy in such cases. The aspiration remains that they should be heard in person where possible, especially where hearings last three or more days and involve significant contested evidence. However, in practice and of necessity, the approach to such hearings may vary.

9. Nothing in this Presidential Guidance constrains the ability of the Employment Tribunals to make decisions on the papers and without a hearing where that is permitted by the Employment Tribunal Procedure Rules 2024.

Relevant factors

10. The mode of hearing is a judicial decision, in the form of a case management order; it must have regard to the interests of justice and seek to give effect to the overriding objective, which is to deal with cases fairly and justly. Such a decision may be taken at any point during the proceedings, including when serving the claim, and may be varied at any stage if there is a material change in circumstances or it is otherwise in the interests of justice. What accords with the interests of justice in each case will depend on all the facts and circumstances.

11. The following (non-exhaustive) factors are relevant when a tribunal decides the mode of hearing and/or considers whether the default approach for listing a case should be disapplied. It will be for a tribunal to decide how to weigh these (or other) factors in the balance in each case.

    11.1 The views and preferences of the parties, which may have been expressed on the ET1 claim form or ET3 response form.

    11.2 The availability of enough space in suitable premises, having regard to the health, safety and security of all participants.

    11.3 The availability of suitable technical facilitates that enable a hearing to take place fully or partly remotely.

    11.4 Whether travel to the Employment Tribunal venue is feasible, especially for those using public transport.

    11.5 The length of the delay that will likely result if the hearing of the case is to be held in person rather than fully or partly remotely.

    11.6 The personal circumstances, disability or vulnerability of any participant, including whether a litigation friend or intermediary is required (in some cases, such circumstances will favour an in-person hearing while, in other cases, the personal circumstances of a participant may favour a fully remote hearing or a hybrid arrangement).

    11.7 Whether the parties are legally represented, which may favour holding the hearing remotely.

    11.8 The ability of any participant to engage meaningfully with a remote hearing, including access to/familiarity with the necessary technology.

    11.9 The nature, type and volume of the evidence to be presented.

11.10 The extent to which the evidence is disputed, and whether the nature of any evidential dispute is such that fairness and justice require it to be evaluated by the tribunal in a face-to-face environment.

11.11 Whether there is a need for an interpreter. (Consecutive translation is possible in a remote hearing, but simultaneous translation – used for example when hearings are conducted in Welsh – is best facilitated by an in-person hearing.)

11.12 Whether the public interest in the case is such that a hybrid approach would facilitate remote observation by members of the press and public.

12. When making decisions about mode of hearings, judges will find it helpful to consult the Equal Treatment Bench Book, Appendix E[2].

Changes to mode of hearing

13. The tribunal may change the mode of hearing at short notice, such as by converting an in-person hearing to video. This may follow an application by a party. It may also happen because the tribunal has taken that decision on its own initiative, driven by circumstances that are difficult to predict in advance; examples include when fewer cases than expected have settled, when a hearing room is no longer available, or when a judge is no longer available to conduct the hearing in person. Arrangements for hearings are fluid until the last moment; conversion to video (including via the virtual region[3]), so that the listed date is retained, is generally preferable to postponement of the hearing and consequential delay.

14. The tribunal may also change the duration of a hearing, or the location of an in-person hearing, at short notice. Again, this may follow an application by a party or reflect changing circumstances such as the availability of a judge, non-legal member or hearing room. In the case of the duration of a hearing, it can include shortening its length (which may mean altering any timetable previously imposed on the parties by means of a case management order).

Responsibilities of the parties in a remote hearing

15. The responsibilities of the parties ahead of a remote hearing are set out at paragraphs 16 to 22 below. These responsibilities may be incorporated by reference into any case management orders and directions produced by the tribunal (but the tribunal may vary or supplement them as it sees fit). It is not an exhaustive list.

16. Parties should communicate with any witnesses they intend calling to give evidence remotely, to ensure that they can participate effectively in a remote hearing (and, if a party is not satisfied that a witness will be able to participate effectively in a remote hearing, they may make the appropriate application to the tribunal).

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[2] https://www.judiciary.uk/about-the-judiciary/diversity/equal-treatment-bench-book/.
[3] See the Appendix to this guidance.

17. Parties should ensure that any of their witnesses giving evidence remotely are aware of the following:

    17.1 The instructions for logging on to the chosen platform, as provided by HMCTS, including any access code or PIN;

    17.2 The need to use a suitable device (with camera, speaker and microphone) and a stable internet connection when giving their evidence remotely;

    17.3 The need to use this device at the allotted time and without interruption in an environment that is suitable for the provision of remote evidence;

    17.4 That, just as when evidence is given during an in-person hearing, they must not have any person guiding or influencing their answers to questions;

    17.5 That they remain under oath during any adjournment and therefore unable to discuss their evidence with any other person (unless the tribunal permits them to do so); and

    17.6 That it is a criminal offence to record or broadcast a hearing without the permission of the tribunal.

18. Parties should direct their witnesses towards guidance given by HMCTS on what to expect when joining a telephone or video hearing[4]. The judiciary of the Employment Tribunals has also provided an online tutorial on tips for video hearings[5]. Joining a video hearing by a mobile telephone device is discouraged; this is because the small screen makes it difficult to participate effectively.

19. Parties should ensure that witnesses have available to them, at the time of giving their evidence, the form of oath or affirmation that each witness wishes to take and, if they wish to take an oath on a Holy Book, to advise them that they must provide their own copy. (It is not necessary for witnesses to have a Holy Book in order to take a religious oath, provided they regard themselves as bound by the oath. If they do not wish to take a religious oath without a Holy Book or other sacred object and have none in their possession, they may instead affirm).

20. Parties should ensure that each witness has available to them a copy of their witness statement as exchanged and submitted to the tribunal, a copy of all other witness statements as exchanged and submitted to the tribunal and a copy of the hearing file[6] in a version that precisely reflects that provided to the tribunal.

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[4] https://www.gov.uk/guidance/what-to-expect-when-joining-a-telephone-or-video-hearing.

[5] https://www.judiciary.uk/guidance-and-resources/employment-tribunal-ew-video-17-tips-for-video-hearings/.

[6] The hearing file is the file of documents that is to be used at the hearing. Many judges and legal professionals will call this the “bundle”.

21. If witness statements and the hearing file are going to be sent to witnesses in electronic form, parties should ensure that they will be able to view them simultaneously and conveniently and that they have the ability to read them and turn to specific pages when directed to do so. Further guidance in the use of electronic documents is given at paragraph 24 below.

22. Parties should, for administrative purposes, maintain a means of immediate contact with their witnesses (such as email address, telephone number or instant messaging) on the days and times when they are to give their evidence.

23. The responsibilities at paragraph 16 to 22 apply equally to any representative instructed in the case, both in respect of the party instructing them and any witnesses that may be called. Any representative instructed in the case should set up a mechanism for immediate contact with the party instructing them, so that instructions can be given swiftly and conveniently.

Electronic documents

24. There should be consistency in the provision of electronic copies of documents for hearings in a format that promotes the efficient preparation for, and management of, a hearing. Paragraphs 24.1 to 24.15 below apply when a tribunal has ordered the parties to send documents for a hearing in an electronic format and at least one of them is a represented party[7]. They apply whether the hearing takes place in person or remotely.

    24.1 The tribunal may require a represented party to provide electronic copies of documents to the tribunal on behalf of all parties.

    24.2 Any case management agenda may be in Microsoft Word .doc or .docx format, in Open Document format, in rich-text format or as a PDF. Any other electronic documents, including witness statements, must be in PDF format. The tribunal may ask for some electronic documents to be provided in Word format, such as lists of issues or written submissions.

    24.3 The index to the hearing file must either be at the front of the hearing file (and hyperlinked to the page in the hearing file to which the index refers) or saved in a separate PDF document that is sent to the tribunal alongside the hearing file.

    24.4 All pages in the hearing file must be numbered electronically and not by hand.

    24.5 The first page must be numbered page 1, whether or not the first page is an index. Each page must be numbered sequentially until the last page of the hearing file. The numbering must use standard Western Arabic numerals (1, 2, 3) and not using other systems (such as Roman

[7] In this context, a represented party is one that has either a “legal representative” or a “lay representative” as defined at rule 2 of the Employment Tribunal Procedure Rules 2024. While paragraphs 24.1 to 24.15 do not apply to unrepresented parties, they are nonetheless encouraged to comply so far as possible to enable the case to be dealt with efficiently. This also supports the tribunal’s efforts to work fully digitally insofar as this is possible.

numerals or letters). The hearing file must not have separately numbered sections.

24.6 The page numbers on each page must match the PDF's electronic page numbering and the page numbering of any printed copy of the hearing file (for example, if produced for others such as witnesses and members of the press or public).

24.7 Significant documents (such as a letter of dismissal or an appeal outcome letter) must be bookmarked. The bookmark must be a brief description including the date (using the UK system) if appropriate, e.g. "list of issues", "dismissal letter 01/04/25"; "appeal outcome 24/07/25". Do not bookmark every single document; this makes the bookmarks less useful.

24.8 All pages must be subjected to OCR (optical character recognition) and the resulting text saved as an invisible, searchable layer within the document.

24.9 No documents should contain any white fonting/white text.

24.10 Any page that has been in a landscape orientation must be reorientated so that it can be read from left to right. A page must not appear sideways-on or upside down.

24.11 The default view for all pages should be 100%.

24.12 All pages should be resized so they are A4 size. If a page is necessarily a significantly different size (for example, it is A3 size because it is a plan), the parties must provide that document in a separate PDF or apply to the tribunal for directions.

24.13 The hearing file should be saved in colour format if any of the documents are in colour.

24.14 The resolution of the hearing file should not be greater than 300 dpi. The hearing file should be electronically optimised to ensure that the file size is no larger than necessary.

24.15 If documents need adding to the hearing file after it has been delivered to the tribunal, this must be done by adding them to the end of the hearing file and using the same numbering system. If documents need adding to the hearing file after the hearing has started, the parties must seek the tribunal's directions about how to incorporate those pages.

<u>Sending electronic documents to the tribunal</u>

25. Paragraphs 25.1 to 25.4 apply to all parties, whether represented or not. They apply whether the hearing takes place in person or remotely.

25.1 Since the summer of 2024, nearly all new cases in the Employment Tribunals have been part of a new system involving a digital portal[8]. Where a case is proceeding via the portal, the parties must use the portal to upload their documents (unless the tribunal asks or permits the party to send them another way).

25.2 If the case is not proceeding via the portal, then:

(a) If the total size of the documents does not exceed 20MB, documents may be sent by a single email whose subject is as set out at paragraph 25.3 below;
(b) Otherwise the party should contact the tribunal for guidance on how to proceed.

25.3 Where a party sends documents to the tribunal by email, the subject line of the email must set out the following information in this order: case number; an abbreviated version of the case name which contains at least the claimant's surname; and the hearing date(s) to which the documents relate.

25.4 A party must not, without the tribunal's permission, send any documents to the tribunal by uploading them to a cloud service and then sending a link to the tribunal inviting the tribunal to browse and/or download them itself. A party must not, without the tribunal's permission, send any documents to the tribunal by bringing along a memory stick or similar device. Any attempt to provide documents to the tribunal by these methods may mean that the documents are not read.

26. This guidance takes effect from 4 June 2026.

Judge Barry Clarke
President

[8] For more details, see https://www.judiciary.uk/courts-and-tribunals/tribunals/employment-tribunal/employment-tribunal-england-wales/how-should-i-communicate-with-employment-tribunals/.

Appendix: explanatory note regarding the virtual region

The Employment Tribunals in England and Wales comprise a number of physical, administrative "regions". Each has a Regional Employment Judge and a regional office from which administrative support is provided by His Majesty's Courts and Tribunals Service (HMCTS). Judges and members of the Employment Tribunals are assigned wholly or mainly to one region.

Between them, across numerous venues in England and Wales, the regions have daily use of 135-140 physical hearing rooms. This number varies periodically due to estate issues. Remote hearings, by contrast, take place in "virtual" hearing rooms. By using video, the Employment Tribunals can operate substantially more hearings than would be the case if they took place exclusively in person. Each region will, daily, run a large number of remote hearings. This can support the efficient administration of justice by reducing delay, the cost to the public purse, and the costs incurred by the parties.

The virtual region, established in April 2021, is not an Employment Tribunal region in the sense just described. The name describes a cohort of judges who are able to sit on cases on a fully remote basis. The virtual region has two features:

- It takes advantage of video technology to maximise flexibility in listing. Acting like an intermediary, it links cases that lack judges in one region with judges in a different region who may be available to sit remotely.

- It rebalances judicial resources across England and Wales. Between them, the four regions covering London and South East of England generate half of the national caseload in Great Britain; hold 60% of the outstanding stock of single claims; and have about a third of the judges. That is principally why those regions have the longest waiting times.

Although the four regions covering London and South East of England are the largest users of the virtual region, any of the regions in England and Wales may use judges in the virtual region. This may be necessary when, due to lower than expected settlement rates, a region has a surplus of listed hearings and a shortage of judges to hear them.

When a case is transferred to the virtual region, it usually means that it will be heard by a judge sitting alone[9].

[9] See paragraph 24 of the Joint Presidential Guidance on panel composition in the Employment Tribunals: https://www.judiciary.uk/guidance-and-resources/practice-direction-from-the-spt-panel-composition-in-the-employment-tribunals-and-employment-appeal-tribunal/.