



Employment Tribunals (England and Wales)

Presidential Practice Direction on remote hearings and open justice

1. Regulation 11 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (“the Regulations”) allows the President to make Practice Directions about the procedure of Employment Tribunals in the area for which the President is responsible. This Practice Direction concerns hearings held by electronic communication in England and Wales under rule 46 of the Employment Tribunals Rules of Procedure (as set out at Schedule 1 of the Regulations), which can be categorised as remote hearings. Having regard to the paramount importance of the principle of open justice, it addresses methods to safeguard open justice when hearings are conducted remotely.
2. This Practice Direction is issued in response to the challenges posed by the Covid-19 pandemic. Those challenges are described in more detail in the accompanying Presidential Guidance on remote and in-person hearings, which should be read alongside this Practice Direction. This Practice Direction and the accompanying Presidential Guidance will be reviewed periodically.

Rules

3. Rule 46 provides as follows:

A hearing may be conducted, in whole or in part, by use of electronic communication (including by telephone) provided that the Tribunal considers that it would be just and equitable to do so and provided that the parties and members of the public attending the hearing are able to hear what the Tribunal hears and see any witness as seen by the Tribunal.

4. In addition, rule 44 provides as follows:

Subject to rules 50 and 94, any witness statement which stands as evidence in chief shall be available for inspection during the course of the hearing by members of the public attending the hearing unless the Tribunal decides that all or any part of the statement is not to be admitted as evidence, in which case the statement or that part shall not be available for inspection.

It is important to emphasise that rule 44 provides for inspection of a witness statement in the prescribed circumstances; it does not allow for copies to be taken.

Definitions

5. For the purposes of this Practice Direction:
 - 5.1 A “participant” in a hearing includes any of the following: an Employment Judge; a non-legal member; a clerk from Her Majesty’s Courts and Tribunals Service (“HMCTS”); a party; any representative who may be instructed; any litigation friend, personal helper or other supporter; any witness who may be called; and any interpreter who may be required.
 - 5.2 A “wholly remote” hearing is one without any participant being physically present in an Employment Tribunal venue. Instead, the participants join remotely by using a telephone or by using a personal computer, laptop, tablet or smartphone to log on to an audio or audio-visual platform.
 - 5.3 A “partly remote” hearing is one where at least one participant is physically present in an Employment Tribunal venue and one or more of the other participants joins remotely by using a telephone or by using a personal computer, laptop, tablet or smartphone to log on to an audio or audio-visual platform. Given the number of potential participants, there are many permutations of a partly remote hearing. (It is sometimes referred to as a “hybrid” hearing.)
 - 5.4 A hearing held “in person” is one where all participants are physically present in an Employment Tribunal venue. (It is sometimes referred to as an “attended” hearing.)
 - 5.5 The “tribunal” means an Employment Judge sitting alone or an Employment Judge sitting with one or two non-legal members in accordance with section 4 of the Employment Tribunals Act 1996 and regulations 8 and 9 of the Regulations.
 - 5.6 Where participants join a hearing remotely, or members of the press or public observe a hearing remotely, the locations from which they do so are, for the duration of the hearing, considered the precincts of the Employment Tribunal in accordance with Regulation 7(1)(c) of the Regulations.

Format of hearing

6. Where the tribunal has decided that it would be just and equitable to hold all or part of a hearing under rule 46, it may do so on a wholly remote basis or a partly remote basis. A hearing taking place over more than one day may use a combination of methods. By way of illustration:
 - 6.1 A wholly remote approach may be required where an Employment Tribunal venue has closed. It might be closed because of a public health emergency like the Covid-19 pandemic, because of unexpected events such as fire or flood or because it needs to be cleaned to reduce infection risk.

- 6.2 A wholly remote approach may be appropriate to ensure that a claim is heard more quickly than would be the case if the parties waited until the physical estate could accommodate an in-person hearing.
 - 6.3 A partly remote approach may be required so that a participant can join a hearing when their personal circumstances (such as their health or location) make physical attendance difficult, or where the Employment Tribunal venue is too small to accommodate all participants while keeping a safe distance for health purposes.
 - 6.4 A multi-day hearing which starts in person, or on a partly remote basis, may continue wholly remotely, such as for the purposes of listening to oral submissions or delivering judgment.
7. Paragraphs 9 to 11 below apply to hearings held in public and set out the ways in which open justice will be safeguarded.
 8. This Practice Direction draws a distinction between those hearings which may be observed remotely and those where, subjected to safe distancing, attendance is preferred. Attached to the accompanying Presidential Guidance on remote and in-person hearings is a table that visualises some of the permutations that operate in respect of partly remote hearings; it will hopefully assist in understanding the point at which attendance is preferred.

Observation of hearing – remotely

9. In the case of a wholly remote hearing, or a partly remote hearing where the only persons present in an Employment Tribunal venue are the tribunal and/or the clerk assigned to the case, open justice will be safeguarded by the following:
 - 9.1 Any member of the press or public may observe the hearing remotely by contacting the administrative staff in the regional office of the Employment Tribunal region in which the matter is proceeding. Email contact is preferred; the relevant email address is provided on the cause lists produced by each regional office.
 - 9.2 In response to such a request, HMCTS will provide details of how to dial in by telephone or how to log on to the audio or audio-visual platform being used. These details are for the exclusive use of the person to whom they are provided. They must not be forwarded to any other person unless the tribunal gives permission (and on such conditions as the tribunal may impose). This preserves the tribunal's ability to maintain order, discipline and control over what is done during the hearing, and thereby maintain the dignity and integrity of the proceedings.
 - 9.3 Members of the press or public will be entitled during the hearing to inspect any witness statement which stands as evidence in chief insofar as it has been admitted as evidence. In particular:
 - (a) Where an audio-visual platform is being used and members of the press or public are present, this may be done by placing the witness statement on screen for long enough that it can reasonably be read or

by leaving it visible on screen during an adjournment while a clerk scrolls through it.

- (b) If it is not practicable to place the witness statement on screen, the tribunal may direct the witness to read his or her statement aloud.
- (c) If it is not practicable to place the witness statement on screen or for the witness to read it aloud (perhaps because the statement's length would cause disproportionate delay to the hearing), the tribunal will hear submissions on the best way to ensure open justice¹.

Observation of hearing – by attendance

- 10. Where a partly remote hearing is taking place in a venue where one or more of the parties and/or their representatives are present, open justice will be safeguarded by the following:
 - 10.1 Any member of the press or public may observe the hearing by attending the Employment Tribunal venue in the usual way, as happens conventionally with a hearing in person. This facility will be constrained by the size of the venue and the hearing room and by any local arrangements in place from time to time to ensure a safe distance for health purposes.
 - 10.2 Members of the press or public may inspect witness statements in the terms provided for by rule 44. This is facilitated by the Presidential Guidance on General Case Management (dated 22 January 2018), which guides parties in England and Wales to ensure that the tribunal has available a further copy of the witness statements and bundle for inspection by the public or press. This is subject to any local arrangements in place from time to time to ensure safe handling of paperwork for health purposes. If the need for safe handling precludes inspection in this way, the tribunal will hear submissions on the best way to ensure compliance with rule 44².
 - 10.3 Where the tribunal is satisfied that it is in accordance with the overriding objective to do so, the hearing may be moved to a larger room in the same Employment Tribunal venue to facilitate effective participation. Alternatively, the hearing may be relayed to a further room in the same venue; in such circumstances, the further room is to be treated as an extension of the main hearing room. These options are again subject to the overall availability of space in the venue and any local arrangements in place from time to time to ensure a safe distance for health purposes.
 - 10.4 If it is not practicable for members of the press and public to attend the venue physically in order to observe the hearing, they may apply to the tribunal for the facility to observe it remotely; see paragraph 9 above.

¹ Some professional representatives may be able to assist by setting up a link to a website containing the witness statements, which are openly accessible (i.e. not password protected) on the day of the hearing, made available to members of the press and public on a read-only basis and subject to their agreement not to copy, publish or distribute. An alternative, with the consent of the parties, is to go beyond the terms of inspection for which rule 44 provides; for example, by sending electronic copies of witness statements to members of the press or public or by making them available for download.

² See footnote 1.

Additional safeguards

11. Regardless of whether the hearing is wholly remote, partly remote or held in person, open justice is safeguarded further by the following:
 - 11.1 The publication of press lists and cause lists concerning upcoming cases before Employment Tribunals³.
 - 11.2 On application to the tribunal, members of the press or public may ask to inspect documents put before the tribunal and referred to during the hearing. These may include clean copies of the hearing bundle, witness statements, expert reports, skeleton arguments and written submissions. Any non-party seeking such access will need to explain why they seek access and how granting it to them will advance the principle of open justice. Before deciding whether to grant access and what conditions to impose, and to inform its balancing exercise, the tribunal will consult the parties and (if practicable) any non-parties who may be affected by such disclosure⁴.
 - 11.3 The availability of guidance to HMCTS staff on supporting media access to Employment Tribunals, including guidance for hearings where there is likely to be a high level of interest⁵.
 - 11.4 The availability of a register of Employment Tribunal judgments under Regulation 14 of the Regulations⁶.

Limitations

12. Members of the press and public must note the following:
 - 12.1 They must be quiet when observing a hearing. The best way to do so during a remote hearing is to remain “muted”.
 - 12.2 They may only address the tribunal if they have permission. In a hearing they are observing by attendance, they can ask the tribunal for permission. In a hearing they are observing remotely, they should email the clerk.
 - 12.3 When they observe an Employment Tribunal hearing remotely, they are participating in a formal process. Although tribunals seek to avoid undue formality, the dignity and integrity of the proceedings must still be maintained. They must therefore behave as if they would when physically present in an Employment Tribunal venue. If they do not, they can be disconnected from a remote hearing just as they can be required to leave an in-person hearing.

³ HMCTS provides the press lists and cause lists to Courtel Communications Limited, which publishes them on the CourtServe website: <https://www.courtserve.net>.

⁴ See *Cape Intermediate Holdings Ltd v. Dring* [2019] UKSC 38, and especially paragraphs 41 to 48.

⁵ All guidance is available at this link: <https://www.gov.uk/government/publications/guidance-to-staff-on-supporting-media-access-to-courts-and-tribunals>. It includes general guidance on media access to courts and tribunals ([here](#)), guidance specific to Employment Tribunals (page 5, [here](#)) and guidance in managing high profile cases ([here](#)).

⁶ Available online at: <https://www.gov.uk/employment-tribunal-decisions>.

- 12.4 They must not record or broadcast a hearing, whether the hearing is held remotely or in person, without the permission of the tribunal. To do so without permission is a criminal offence; see section 41 of the Criminal Justice Act 1925 and section 9 of the Contempt of Court Act 1981.
- 12.5 Unless the tribunal has given permission, they must not take copies (including by means of photograph) of any witness statement or document that has been made available for inspection.
- 12.6 Where a member of the public attending a hearing or observing it remotely wishes to use live, text-based communications (including Twitter) during the hearing, they must apply to the tribunal for permission to activate and use, in silent mode, a suitable device for that purpose. The application may be made formally to the tribunal or informally through the clerk. When deciding whether to grant such permission, the tribunal will focus on whether it is likely to interfere with the proper administration of justice. Where a member of the press or other legal commentator attending a hearing or observing it remotely wishes to use live, text-based communications (including Twitter) during the hearing, they may do so without having to apply for permission.
13. Exceptions operate where the tribunal has made a privacy order under rule 50 or in the case of national security proceedings under rule 94 of the Employment Tribunals Rules of Procedure.
14. This Practice Direction has been approved by the Senior President of Tribunals and the Lord Chancellor under section 7A(2C) of the Employment Tribunals Act 1996. It has effect from 14 September 2020.

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

Judge Barry Clarke
President