



GUIDANCE TO TRIBUNAL MEMBERS NO 02/2020
REMOTE HEARINGS AND THE COVID 19 OUTBREAK

A. General

Purpose of this Guidance

1. This guidance is issued to assist tribunal members with the conduct of remote hearings during the period of the COVID-19 outbreak.

Applicability

2. This guidance is temporary and applies from the date of its issue until the President announces that it no longer applies.

Remote hearings

3. While hearing venues are closed due to the COVID 19 outbreak, hearings will take place with participants contributing from a remote location. Hearings will be conducted using a 'virtual' video conferencing platform ('VC') or by telephone. Unless good reason exists to hold all or part of a remote hearing by telephone, the hearing will be conducted by VC. Such reasons may include lack of access to relevant technology by a participant, or difficulties communicating using VC.

A decision without an oral hearing

4. Where parties agree, a decision may be taken on the written evidence, without the need for an oral hearing.¹

The decision to use remote hearings

5. The decision on how a hearing is to be conducted is a matter for the legal member or tribunal, who will determine how best to deal with the reference or claim fairly and justly.

¹ See the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018, schedule to SSI 2018/366, rule 37 (for references) and rule 83 (for claims).

6. When considering the suitability of a remote hearing, the legal member or tribunal will consider the facts and circumstances of the case and any issues that the use of telephone or video technology may present for participants in the hearing, taking account of individual needs

Rules of Procedure

7. Remote hearings are subject to The First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366) and relevant President's Guidance. This includes the overriding objective at rule 2 and rule 50(1), which allows the First-tier Tribunal to regulate its own procedure.

Planning for remote hearings

8. The legal member has a responsibility to plan for the remote hearing. These plans will include a test of the remote technology in advance of the first day of the hearing (see below on VC hearings). Planning should include (in consultation with the parties) giving approximate start times for each witness.
9. The hearing clerk shall, as far in advance of the first hearing date as possible, ask each party to provide contact details (secure e-mail or telephone) for each of their witnesses, so that the clerk can keep in touch with each witness during the hearing before they are due to give evidence. This will allow any changes to start times and requests to join the hearing (or other relevant information) to be intimated to the witness during the hearing at the direction of the tribunal.

B. Principles of Practice during Remote Hearings

Judicial process

10. Parties should not be left with the impression that the remote hearing is a lesser form of justice. At the beginning of the hearing the legal member should remind participants of the judicial nature of the proceedings and that the remote hearing will not compromise the quality of decision making.

Dress code and video conference hearings

11. Given the judicial nature of the proceedings it is expected that participants will adhere to an appropriate dress code when attending a video conference hearing. Members should dress as they would for a physical hearing.

Sensory hearings

12. Sensory principles continue to apply to remote hearings. This means the absence of unnecessary background clutter and noise. Where a VC hearing is taking place, members should situate themselves in a quiet room with an uncluttered and depersonalised backdrop. For example, personal photographs and shelves of books or ornaments should not be visible. This can be achieved either by turning the screen so that it has a blank wall as a backdrop, or by removing pictures from the wall.
13. It is the responsibility of each tribunal member to check their backdrop before the hearing begins. The legal member should do a final check of this during the pre-hearing session.

Noise

14. Tribunal members should ensure that they select an area in their home for the remote hearing where they will not be interrupted and where there is likely to be as little external noise as possible.

Domestic pets

15. Any domestic pets should be prevented from entering the room where tribunal members are conducting the remote hearing.

Ensure enough time is given for people to speak

16. There is sometimes a short time delay in VC or telephone conferencing. The legal member should check that a participant has finished speaking before proceeding, or allowing questions/interruptions. This will ensure they have finished and allow for any delay in connections. This is particularly important where a participant has a communication difficulty or a sensory condition.

Make sure everyone can see and hear

17. The legal member should check that all the participants can see (VC only) and hear each other. This must be checked each time a new witness joins the hearing. If a tribunal member or participant cannot hear or see all other participants, they should alert the legal member immediately. The legal member will then ensure that any missing information/evidence is repeated and heard or take an adjournment to allow any technological difficulties to be resolved.

Comfort time

18. Remote hearings may last longer than physical hearings. Remote hearings can be more tiring due to the extra concentration required. Time should be factored in for comfort breaks, to ensure that all participants, including children, are able to concentrate and remain focused during the hearing. This is particularly important where a participant has concentration or communication difficulties or where a party or witness becomes upset or distressed during the hearing. Tribunal members shall have regard to [President's Guidance 02/2019: The Child and the Hearing](#).

Adjournments

19. Where any adjournment takes place, the legal member will remind witnesses that they should not discuss their evidence or the proceedings during the adjournment.
20. A short break should be taken after each witness.

Timings

21. Remote hearings will ordinarily commence at 10 am and conclude by 4 pm. Any hearing which lasts for a day must have at least one comfort break in the morning and one in the afternoon, in addition to the lunch break, which should last no less than 30 minutes. Participants should be advised of this by the legal member at the start of the proceedings, which will offer reassurance.
22. Before a comfort or lunch break takes place, the legal member will remind witnesses that they should not discuss their evidence or the proceedings with anyone, including their representative, during the break.
23. In VC hearings participants will be asked to mute their microphones and blank their screen during a comfort break.

Explaining the focus of the hearing

24. Explaining the focus of the hearing and how it will be conducted is important so that participants understand the order of proceedings. The legal member should check understanding before the hearing begins and at relevant stages throughout the hearing.

Questions from the tribunal

25. During a telephone hearing where a witness is to be asked questions by a tribunal member, the member should introduce themselves to the witness before asking a question, so that the witness is clear who is speaking.

Privacy

26. Participants will be asked to confirm that no other person is present in the room where they are participating in the hearing (apart from a supporter, where this is relevant) and that no person can overhear the proceedings. Participants shall be reminded that the proceedings are private.

C. Video Conference (VC) Hearings

VC Test

27. Where a VC hearing takes place, on the first day of the hearing, all tribunal members, parties, party representatives and witnesses will be required to participate in a VC test. This test will take place at a time fixed by the tribunal and will conclude no less than 30 minutes before the start of the hearing. The purpose of the test is to check that all hearing participants can access the VC platform, that they can be seen and heard and that they can operate the shared documents function on the platform.
28. In some cases, (for example, those where the party representatives have had no or limited experience of a VC hearing or where there is an unrepresented or non-legally represented party), it may be beneficial to hold a test the week before the hearing. In this case, the date for this should be fixed at the case conference call when the hearing dates are fixed.

Converting part or whole to telephone hearing

29. If as a result of the VC test it is clear that a participant will not be able to adequately use the VC platform due to technical issues (or for any other good reason), that participant may take part in the hearing by telephone, either through the VC platform or separately, or the hearing type may be converted as a whole to a telephone hearing.

Joining the hearing

30. Time will be set aside for the tribunal members to join the VC platform at least 30 minutes before the hearing. This will allow the tribunal time for pre-hearing discussions in private and to discuss (again in private) any relevant matters with the clerk. This will be a locked session.
31. Parties and their representatives will be invited to join the VC platform at least 10 minutes before the hearing is due to begin. Participants will see a holding message until the hearing is ready to begin. The hearing clerk will advise the tribunal members once everyone else has joined the hearing. Once this is

confirmed, the tribunal members will join the hearing. Witnesses will not join the hearing at this point.

32. Witnesses will be invited to join the hearing by accessing the VC platform once advised by the hearing clerk that the tribunal is ready.

Tribunal member communication

33. Where the tribunal members wish to communicate with each other during breaks in the hearing, they will do so using the private meeting function on the VC platform. They will be assisted in doing so by the hearing clerk. Tribunal deliberations will also be conducted using this communication method.

Security

34. The hearing clerk will be responsible for ensuring the hearing, once it begins, is secure, and for alerting the legal member to any suspected hearing security issue.

Connection

35. The legal member shall ensure that all participants can see and hear each other at all times during the hearing. Should a participant 'leave' the hearing unexpectedly due to a technical issue, the legal member shall pause the hearing or adjourn, and resume once the participant has re-joined.

Documentary evidence

36. Where possible, any document being referred to by a witness, representative or tribunal member shall be displayed for all participants using the 'screen sharing' function on the VC platform. Where a participant cannot view a document using this function, or where a document is not available for sharing on the VC platform, and the participant cannot view the document by other means, the hearing clerk will take steps to ensure that a copy of a document is available to the participant to view while it is being referred to. Where this is not possible, the relevant parts of the document should be read out by the legal member or the representative making reference to the document.

D. Telephone hearings

37. Telephone hearings will be conducted using BT Conferencing. The clerk will test the telephone equipment in advance of the hearing.

Tribunal member dial-in time

38. The clerk will telephone into the conference call number as the 'chairperson' at least 30 minutes before the hearing. The tribunal members will also dial in as 'participants' at this time. This will allow the tribunal time for pre-hearing discussions and to discuss any relevant matters with the clerk.

Hearing clerk control of the telephone hearing

39. The hearing clerk, as 'chairperson', controls the telephone conference as required, including muting the call or putting participants on hold.

40. Everyone is placed on a silent hold by the hearing clerk until all participants and tribunal members have dialled in and the hearing is ready to begin. Once everyone has dialled in, the hearing clerk will check that no-one else has joined the call, lock the call and commence the proceedings. The hearing clerk will also start recording the hearing.

Introductions

41. The legal member will introduce her/himself followed by the two specialist members. The legal member will confirm the identity of the parties and their representatives and any supporter, if present.

42. The legal member will explain that, unless otherwise directed, communication will be restricted to one person for each party. The legal member will then confirm with the parties who will be speaking for the appellant/claimant and respondent/responsible body, as appropriate.

Witnesses

43. When a witness is due to give evidence, the hearing clerk will unlock the call to allow them to join. Once they have joined, the call will immediately be locked again.

44. Where a witness is to speak to a matter from the documentary evidence, the clerk will provide the witness with access to the relevant section of the bundle at the start of their evidence.

Adjournments

45. If a brief adjournment is required, the legal member will advise the parties that the proceedings will be briefly adjourned, and that they should remain on the line. The hearing clerk can then place the parties on a silent 'hold' and mute the participants.

46. If a lengthier adjournment is required, (for example, to stop for a lunch break, or for the tribunal to discuss something separately), the legal member will advise that the hearing is being adjourned until a specific time and that the parties should dial back into the hearing at that time. The hearing clerk can then 'eject' all participants and end the call.

Ending the Telephone Hearing

47. At the end of the hearing, the legal member will 'eject' all callers from the conference and end the call.

E. Documentary Evidence

48. The requirements set out in paragraphs 21 to 33 of the [PGN 01/2019 'Documentary Evidence'](#) are suspended. This removes the requirement for the respondent/responsible body to prepare the bundle (electronic or hard copy).

Electronic Bundle

49. An electronic bundle of the documentary evidence will be created by the caseworker. This will create a single document that can be easily navigated by the parties/tribunal members. No hard copy bundle will be created, unless good reason exists to do so.

50. Where it is intended that a witness will refer to certain documents in the bundle, and where there is no 'shared screen' facility available (for example in a telephone hearing or where the shared screen facility in a VC hearing is not available for that witness) the hearings clerk will e-mail the document(s) to the witness shortly before the start of that witnesses evidence (or during it, if the need arises). For this purpose, where a party anticipates that no 'shared screen' facility will be available, a list of all documents that each witness is likely to be referred to will be sent by each party to the hearing clerk at least five working days in advance of the hearing. This should be clarified at the case conference call stage and communicated to the case officer.

51. Each document will be bookmarked in the electronic bundle to assist in navigation, with page numbering throughout so that specific pages/documents can be referred to during the hearing.

52. Page numbering will have a consistent prefix followed by a consecutive number throughout the whole document, e.g. 'HEC 0001, HEC 0002, HEC 0003, etc.', rather than the usual T, A, and R/RB sections.

Timescale

53. The electronic bundle will be created once the case statement period ends and will be circulated to the parties and tribunal members. It may be added to if necessary and re-circulated.
54. Late requests to lodge additional documents will not be considered within 5 working days of the hearing, unless exceptional circumstances exist.

Limits on the number of witnesses

55. The Administration shall send a copy of [Information note 01/2018 for Parties, Representatives, Witnesses and Supporters](#) to the parties when a hearing is to be fixed. This explains that each party can bring up to 2 witnesses in a reference, and 5 witnesses in a claim.

Conclusion of evidence

56. Once a witness has given their evidence, the clerk will send an email to the witness to instruct that any documentation be deleted in such a way that it cannot be retrieved in any form after the hearing is over.
57. Where a party is represented, the representative shall confirm to the legal member by, at the latest, the following working day that each of that party's witnesses has complied with this instruction.

May Dunsmuir
President
July 2020