



## **GUIDANCE TO TRIBUNAL MEMBERS NO 02/2020**

### **REMOTE HEARINGS AND THE COVID 19 OUTBREAK**

#### *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 and during restrictions on public movement and social distancing, hearings will take place with participants contributing from a remote location. Hearings will be conducted using a 'virtual' video conferencing platform or by telephone. At the current time, a telephone system is available.

#### *The decision to use remote hearings*

4. The decision on how a hearing is 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.
5. 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 the use of telephone or video technology may present for participants in the hearing, taking account of individual needs.

#### *Rules of Procedure*

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

### *Telephone hearings*

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

### *Tribunal member dial-in time*

8. The legal member will telephone into the conference call number as the 'chairperson' at least 30 minutes before the hearing. The tribunal members and clerk 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.

### *Legal member control of the telephone hearing*

9. The legal member controls the telephone conference as required, including muting the call or putting participants on hold. See the appendix for the control functions.
10. Everyone is placed on a silent hold by the legal member until all participants and tribunal members have dialled in and the hearing is ready to begin. Once everyone has dialled in, the legal member will lock the call and commence the proceedings. The clerk will start recording the hearing.

### *Introductions*

11. 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.
12. 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.
13. 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*

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

### *Adjournments*

15. 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 legal member can then place the parties on a silent 'hold' and mute the participants.
16. 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 legal member can then 'eject' all participants and end the call.
17. Where any adjournment takes place, the legal member will remind witnesses that they should not discuss their evidence or the proceedings during the adjournment.
18. A short break should be taken after each witness.

### *Ending the Telephone Hearing*

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

### *Principles of Practice during Remote Hearings*

#### *Ensure enough time is given for people to speak*

20. There is sometimes a short time delay in 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.

#### *Make sure everyone can hear*

21. The legal member should check that all the participants can hear each other. This must be checked each time a new witness joins the hearing. If a tribunal member or participant cannot hear they should alert the legal member. The legal member will then ensure that any missing information/evidence is repeated and heard.

#### *Comfort time*

22. Telephone hearings may last longer than a physical hearing. They 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 difficulties or where a party or witness becomes upset or distressed during the hearing.

23. Any hearing which lasts for a day must have at least one comfort break in the morning and one in the afternoon. Participants should be advised of this by the legal member at the start of the proceedings, which will offer reassurance.

#### *Explaining the focus of the hearing*

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

#### *Questions from the tribunal*

25. 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.

#### *Documentary Evidence - PGN 01/2019 Documentary Evidence*

26. 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*

27. 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.
28. 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.
29. 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*

30. 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.

31. Late requests to lodge additional documents will not be considered within 5 working days of the hearing, unless exceptional circumstances exist.

#### *Witnesses*

32. Where it is necessary for a witness to refer to a document, they must have access to a secure email server during the course of the hearing. Relevant documentation will be sent by the clerk to the witness, which they will access during their evidence.

33. Where a secure e-mail server is not available for a witness, questions about any relevant documents may still be posed, if necessary with the relevant parts of the document being read out to the witness.

34. To assist with this, the legal member or tribunal shall direct that parties provide a list of witnesses, the order/expected time they will be heard, any documents that they are to be referred to, and a secure email address, no later than 6 working days in advance of the hearing.

#### *Limits on the number of witnesses*

35. 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*

36. 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.

37. 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**  
**May 2020**

## APPENDIX

### Legal Member Control functions

The BT Conferencing facility allows the legal member to have the following control over the call:

- To lock/unlock the call for security purposes – dial \*7
- To mute/unmute all other participants on the call – dial \*5
- To mute/unmute themselves – dial \*6
- To playback all of the names of the participants who have dialled in – dial \*1
- To eject all participants and end the call – dial ##