

TRIBUNALS IN THE TIME OF CORONA

An overview of the Presidential FAQs arising from the Covid-19 pandemic

12 June 2020

FAQs arising from the Covid-19 pandemic

- LIVING FAQ DOCUMENT : <https://www.judiciary.uk/wp-content/uploads/2020/06/FAQ-edition-date-1-June-2020.pdf>
- LATEST EDITION FEATURES A "ROAD MAP"
- ALSO : Presidential guidance in connection with the conduct of employment tribunal proceedings during the Covid 19 pandemic <https://www.judiciary.uk/wp-content/uploads/2015/03/Presidential-Guidance-ET-Covid19.pdf>
- AND: Amendment to Direction issued by ET Presidents on 19 March 2020

Remote Hearings

- Preference for Cloud Video Platform ("CVP")
- Reasonable adjustments will be made
- ET will continue to have regard to principles of open justice
- More guidance expected, but until then see:
 - FAQ 16 for video conferencing etiquette
 - <https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak> For general guidance and practical info on how HMCTS will use technology during the outbreak
 - <https://www.gov.uk/government/publications/how-to-join-a-cloud-video-platform-cvp-hearing/how-to-join-cloud-video-platform-cvp-for-a-video-hearing> For instructions on how to join CVP, including a video tutorial
 - <https://www.cloisters.com/ets-go-virtual-a-practical-guide/> For guidance on what the relevant factors for determining whether a hearing will take place remotely might be
 - <https://www.cloisters.com/preparing-for-remote-hearings/> On preparing ourselves and clients for remote hearings

What has been happening until now?

- From 23 March 2020, all in-person hearings due to start before 26 June 2020 were postponed and converted to a CMD by telephone. **See FAQ 5 for guidance on how to prepare.**
- ORDERS/DIRECTIONS :
 - If ET had previously made orders and directions for things to be done between 23 March and 26 June 2020 AND the final hearing was also going to take place between those dates, those orders/directions were suspended.
 - If the final hearing was going to take place after 26 June 2020, those hearings will go ahead in accordance with the ET's Road Map. Parties are expected to continue to comply with directions/orders.

The Road Map : 3 tracks



	Short	Standard	Open
Type of claim	Claims for unpaid money such as wages, holiday pay, redundancy pay, notice pay etc	Unfair dismissal	Discrimination, detriments for whistleblowing etc
Usually heard by	EJ alone	EJ alone	EJ & members
Typical listing	1-2 hours	1-3 days	3 days or more

The Road Map : 4 phases



June 2020

Focus remains on :

- Remotely conducted CMDs
- Judicial Mediations
- Hearings involving one or more of the priority jurisdictions (ie. statutory appeals against prohibition notices, applications for interim relief, dismissals where e'ee has lost tied accommodation, Covid-19 pandemic related claims alleging detriment or dismissal on health and safety or protected disclosure related grounds)

June 2020

- In-person hearings only in very exceptional circumstances
- Increased use of Cloud Video Platform ("CVP")
- Unlikely to hear:
 - Standard or Open Track cases, unless short or part-heard
- Likely to hear:
 - Priority jurisdiction cases
 - Straightforward money claims (with little/no disputed evidence)
 - Remedy hearings (with little/no disputed evidence or where Rule 21 judgment issued)
 - Applications for costs/expenses, reconsideration etc.

July & August 2020

- In addition to types of cases considered in June, ET will seek to determine standard track cases in greater numbers using CVP
- Aim to list for hearing in July & August those standard track cases, judged to be suitable to be heard remotely, that lost their allocated dates in late March – end June 2020 due to the pandemic
- A few in-person hearings will begin where social distancing allows
- Where there are many participants, some hearings will be "hybrid" with some attending in person and some remotely using CVP.

September & October 2020

- In addition, ET will seek to determine open track cases in greater numbers using CVP, especially the shorter ones
- Range of approaches will be available, including wholly in-person hearings (but still only a few), hybrid hearings, full CVP hearings.

November & December 2020

- A period of consolidation
- Review of the approach in accordance with Public Health guidance recognising that restrictions may by that point be relaxed or tightened

Practical points : Contacting the ET

- Parties remain at liberty to make any application to the ET that they consider appropriate at any time (FAQ 24)

However:

- Avoid making unnecessary phone calls to the ET office
- Send an email instead with case number and names of parties in subject field.
- Expect a delay (FAQ 17)

Practical points : Time Limits

- Usual strict time limits still apply to presenting a claim
- If a claim is presented late, an EJ **may** still allow it to proceed. Usual considerations apply after hearing from both parties (FAQ 18)

Practical points : Serving the ET₃

- ET will respond to extension of 28 day deadline to serve the ET₃ on a case-by-case basis (FAQ 19)
- Suggest Rs submit a “holding ET₃” until further information can be provided once individuals can be contacted after the pandemic
- If R is closed and discover late that they have been served with a claim, they must respond as soon as they can, even where the deadline has passed and even if a judgment has already been issued in C’s favour. Accompany the ET₃ with an application for a retroactive extension of time under Rule 20.
- If you are concerned that your employer client will miss an incoming ET₁ claim form sent by post, the employer can apply to ask the ET to copy ET₁s to a dedicated inbox (FAQ 20). Same goes for Claimants (FAQ 21).