

Employment Tribunals 2022-23 – What to Expect

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The Presidents of the Employment Tribunals England and Wales and Scotland have issued a new road map for 2022-23, providing an update on the resourcing challenges faced by employment tribunals and the steps put in place to address these. The Presidents have also taken the opportunity to provide an update on the HMCTS Reform Programme, what this means in the employment tribunal context, and what format different hearings types will default to for the coming year.

HMCTS Reform Programme

Described by the Presidents as “genuinely transformative”, HMCTS reform within employment tribunals is largely concerned with digitising current paper-based processes. Instead of sending letters and emails, parties and their representatives will be expected to make use of a portal and this will become the primary means of communication (although paper channels will remain open for those unable to access the reformed systems). There will be Court and Tribunal Service Centres handling certain administrative tasks, as well as operating as the “frontline” for telephone enquiries. A replacement video platform is expected to be rolled out within 2022. Claim forms and response forms are to be submitted via an online service.

Roll-out will be in stages; currently, HMCTS expects the roll-out to begin with open track cases involving unrepresented claimants, although the Presidents have stressed that “much remains to be decided”. “Open track” cases are the most complex claims – those involving discrimination and whistleblowing allegations. “Standard track” cases cover unfair dismissal claims and “Short track” cases relate to monetary claims, such as claims for unpaid wages, holiday pay, notice pay or redundancy pay.

Hearing format

The road map stresses that the format will vary from tribunal to tribunal because of variable resources, such as IT facilities, the existing case load and the number of usable tribunal rooms. There will also continue to be the possibility of hybrid hearings, in which one or more participants (including panel members) joins remotely.

| Hearing Type | Default Hearing Format(s) | | |
|--|---------------------------|-------|-----------|
| | Telephone | Video | In-person |
| Case Management Preliminary Hearing | ✓ | ✓ | |
| Open Preliminary Hearing (straightforward) | | ✓ | |
| Open Preliminary Hearing (complex) | | | ✓ |
| Strike Out/Deposit Order Hearing | | ✓ | |

| | | | |
|--|-------------------|--|-----------------------------------|
| Interim Relief Hearing | | ✓ | |
| Judicial Mediation | ✓ (in some areas) | ✓ | |
| Short Track Final Hearing (straightforward) | | ✓ | |
| Short Track Final Hearing (significant disputed evidence) | | | ✓ (subject to local resources) |
| Standard Track Final Hearing | | ✓ (in some areas due to backlog e.g. London/South East) | ✓ |
| Open Track Final Hearing | | ✓ (in some areas due to backlog e.g. London/South East or lack of hearing rooms e.g. Wales) | ✓ |
| Other Hearings (such as reconsideration or costs applications) | | ✓ | |

Whilst the information above sets out the suggested default position, it will be open to a judge to decide that the default position should not apply, and equally open to a party to request a different format for particular reasons.

Contact



Mark Hickson

Head of Business Development

onlineteaminbox@brownejacobson.com

+44 (0)370 270 6000

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