



# Employment Law Brief

*with*

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2020 was a year when almost everything had to be done differently – or not done at all. But employers still had to deal with day-to-day employee relations issues. COVID does not stop employees from raising grievances and employers still have to manage disciplinary issues. The normal view of a disciplinary or grievance hearing involves several people gathering together in a room - the employee, their representative, someone from HR and either a chair or a full panel assigned to hear and decide the issue. Witnesses may also be brought into the mix.

There may come a time when gathering so many people into a single room once again becomes an everyday occurrence. But for now it still seems downright reckless. It can of course be done with social distancing – a bigger room, all the participants being well spaced out and masks worn by all. But that is not a very satisfactory way to conduct matters.

What is the alternative? Many employers have resorted to conducting internal hearings online. There is nothing in employment law to stop this. There is nothing magical about being physically present that makes a 'live' hearing fairer than a virtual one. But there are particular issues to watch out for.

Whenever a disciplinary or grievance process cannot be conducted as you would want it to be, it is a good idea to think about what the fundamental aspects of a fair procedure are. What is the procedure designed to achieve? In a disciplinary context you want to make sure that the employee is given all the information needed to respond to the charge against them and has a fair opportunity to put their case across to an impartial decision-maker. In a grievance procedure you want to make sure that the employee can explain the basis of their grievance and have it fairly considered. These are the

standards against which the fairness of any online hearing has to be assessed.

Perhaps the most important point is that the technology should not get in the way of the employee's ability to explain their side of the case. The technology that makes online meetings a workable option is not equally familiar to all. Some people have spent most of 2020 bouncing between Zoom and Teams meetings. Knowing when your microphone is muted and whether your camera is on are now everyday concerns. Sharing your screen and adjourning to separate 'rooms' for break out discussions have become second nature to many.

But this is not true for all. A front-line worker who has not spent most of 2020 working from home will not necessarily be familiar with online meetings in the same way as an office worker or manager. It is important that such employees are not simply thrown into an online meeting environment without being given an opportunity to become familiar with the platform being used and have a chance to practice using it. Ideally someone not involved in the matter in question should conduct a technical rehearsal for the meeting showing them how to operate the various controls and pointing out who can see and hear what.



Often an individual will have a right to be accompanied. Unless they happen to live with a union official or colleague, that will generally mean a virtual accompaniment. There is no reason to believe that this is a problem as far as the statutory right to be accompanied is concerned. Generally, the companion can simply be another attendee at the meeting. They do however have the right to confer with the employee during a hearing. They may not feel confident that an online breakout room is sufficiently private so the chair may want to end the meeting and reconvene when the employee wants to discuss an issue with their representative. They could also be encouraged to have a separate channel of communication, perhaps via Facetime or some equivalent on their phones.

Most employers would not want to give permission for an employee to be accompanied by someone other than a trade union official or colleague. Family members, for example are not usually accepted as companions in disciplinary and grievance meetings. Employers can still ask employees to ensure that they are alone in the room when conducting a meeting, but it is probably wise not to get too hung up about this. There is no way of stopping a family member listening in just out of sight of the camera and this possibility should perhaps just be accepted as one of the drawbacks of an online meeting.

Ofcourse the employee may not have the space at home to participate in the meeting in a private room. Not everyone has a study – however makeshift – from which they can do their work. Employers should talk to employees about whether there is a suitable place for them at home that will allow them to participate in the meeting without being distracted by family members of housemates. If there is not, then it may be best to book a meeting room for the employee to use for the meeting – even if all the other participants log in remotely.

It is also worth thinking about timings. Many of us have found that one hour of an online meeting is rather more exhausting than one hour of a meeting in real life. I am generally in favour of hearings not dragging on for too long in any event, but with an online meeting this is an even more important issue. The meeting should not be rushed but do think about taking appropriate breaks to allow everyone to look away from their screen for a meaningful period.

One issue that crops up with online meetings is how easy it is to record them. Recording disciplinary and grievance meetings has both benefits and drawbacks. Obviously if there is a recording of what went on than that can settle any argument that might arise over how the meeting was conducted. On the other hand a recording can lead to an obsessive examination of every word that was said and lead to an unwieldy transcript running to many pages. It is very much up to the individual employer to weigh the advantages and disadvantages of the approach.

But even if the employer decides not to make a recording it may be difficult to prevent the employee from doing so. Should the matter get to a Tribunal then the recording – or a transcript of it – may well be accepted in evidence provided the Tribunal sees how it is relevant to an issue that they have to decide. It is a good rule to always treat a microphone and camera as if they are on and assume that anything you do in front of them could be played back at some stage to an Employment Judge.

Now there's a sobering thought for Christmas.

**Don't forget to check more about Darren Newman on his blog at [A Range of Reasonable Responses](#) or on twitter at [@DazNewman](#)**