



Remote Justice? Virtual benefits tribunals and disabled clients



Funded By

Trust for London
Tackling poverty and inequality

Contents

Executive summary – findings and recommendations	4
Findings.....	4
Recommendations.....	4
Introduction	5
Aim of research and context.....	5
Methodology and limitations.....	6
Methodology	6
Respondents: appellants	6
Respondents: advisers	6
Challenges and small samples	7
Nature of samples and how this may affect results	7
Appellant research	7
Appellant and adviser research.....	8
Findings	8
Overall perceptions of remote hearings.....	8
Positive perceptions	8
Negative perceptions	9
Accessibility	9
Problems with remote hearings	9
Difficulties understanding joining instructions.....	9
Connection and communication problems	10
Communication between clients and advisers.....	10
Appellant stress	11
Breaks and adjournments	11
Respect and courtesy from judges and panels.....	11
Appellant understanding and participation	12
Other problems raised by advisers.....	12
Respondents’ advice.....	13
Advice for advisers	13
Advice for appellants.....	13
Advice for judges	13
Negative impact on outcomes.....	14
Responses to “remote accompanied” idea	14
How this research intersects with evidence from judges	14
Recommendations	16
Which format should be used?	16

How can the experience of appellants at remote tribunals be improved?	18
Conclusion	23
Acknowledgements	24
Appendices	24
Appendix 1: online surveys	24
Appendix 2: sample of information sent to appellants in advance of a telephone or video tribunal	24

Executive summary – findings and recommendations

Findings

- Perceptions of the value of telephone and video conference hearings are very mixed, particularly among advisers. Tribunals held by telephone or video conference are perceived as offering some advantages for some disabled appellants, provided they have representation.
- However, both appellants themselves and their representatives identified significant problems affecting appellants' experiences, which included:
 - technical difficulties
 - stress and lack of emotional support
 - lack of clarity around the process
 - difficulty in communication between clients and advisers
- Advisers were also concerned about negative consequences of judges not being able to see appellants. They thought that sometimes this affected the outcome, as the true nature of appellants' condition was not apparent. And they felt that sometimes appellants were subjected to a more grueling process whereas had the tribunal been conducted in person, with observation evidence, it would have been concluded much more quickly and easily. Some advisers identified a tension between clients' preference for a telephone tribunal (because of access difficulties or nervousness about a face-to-face hearing), and what might be in their best interests in terms of securing a fair hearing.

Recommendations

- For represented appellants, it is essential that there is a genuine and informed choice of format and that this includes a timely face-to-face tribunal for anyone who wants one. Video tribunals should be made more widely available and accessible to appellants. Telephone tribunals should be used with caution. (It is difficult for us to make recommendations about the options for the format of tribunals that should be offered to unrepresented appellants.)
- Appellants should be encouraged by representatives and in HMCTS guidance to have someone in the same physical location as them for emotional support during the tribunal.
- Panels and judges should be aware of the difficulties that may face appellants and advisers during remote tribunals, and mitigate these proactively.
- Communication between clients and advisers during remote tribunals should be better facilitated.
- Greater flexibility should be provided in timings for remote tribunals, to reduce stress and allow for breaks.
- Instructions and guidance for appellants attending remote tribunals should be improved.
- The idea of inviting clients to take part in remote tribunals from the same physical location as their adviser should be further explored.
- Further research is needed to:
 - Explore the experiences of a larger and more representative range of appellants, with a particular focus on appellants without the benefit of representation
 - Investigate how effectively reasonable adjustments are being/can be provided for disabled appellants who need them
 - Determine whether holding tribunals remotely reduces appellants' chances of a favourable outcome

Introduction

IPR is an independent advice agency, funded by Islington Council alongside a range of charitable trusts and foundations, which has served residents of Islington and surrounding boroughs for over 50 years. The majority of our clients are vulnerable or disabled. With support from Trust for London, the IPR Justice project is offering advice and representation to clients challenging welfare benefits decisions at First-tier Tribunals.

Aim of research and context

This research specifically focuses on First-tier Tribunals for welfare benefits held remotely. It explores the experiences of a small number of disabled appellants and advisers who have attended telephone and video hearings to represent them. It aims to highlight any benefits which appellants and advisers perceived from remote hearings, as well as problems they encountered, and to make recommendations based on these findings and on ideas for improvement put forward by advisers themselves.

We are aware of serious concerns raised about remote tribunals more broadly, particularly by the Legal Education Foundation in its research report “Understanding the impact of COVID-19 on tribunals: The experience of tribunal judges”.¹ That research recommended limited use of remote tribunals (and avoidance of them in certain circumstances) until research could be carried out (a) with a representative sample of tribunal users, and (b) which would explore the impact on tribunal outcomes for such users. This research does not fulfil that need. It instead considers the experiences of a very small, unrepresentative group of disabled people, and advisers. It did not explore the impact of the format of the tribunal on the outcome (although numerous advisers did here raise relevant concerns, which are included in the findings). Instead, whilst remote hearings are in use for disabled appellants challenging welfare benefits, this research aimed to offer some insights and practical ideas for improving their experience.

When considering the results of this research, it is also important to be aware of the broader context. Many advisers who participated in our research pointed out that the tribunal in isolation is only one part of appellants’ experience of the benefits system; and some felt that the remote nature of clients’ interaction all the way through the appeals system (including with the majority of advice services), due to pandemic restrictions, was giving clients a worse service overall. Similarly, many appellants expressed concerns about the process that were not directly related to the tribunal itself. The overturn rate at tribunals² in itself shows that things are going wrong both at decision stage and upon internal review; it is certainly true that assessments should be improved to reduce the need for tribunals. It is also notable that the proportion of tribunals that are ‘lapsed’ by the Department for Work and Pensions is increasing, i.e. in more cases the benefits decision is changed, rendering the tribunal unnecessary. This is to be welcomed as it spares appellants the stress of participating in a tribunal.³ All this notwithstanding, tribunals do continue to provide an important route to redress,

¹ <https://www.thelegaleducationfoundation.org/articles/tlef-research-reveals-the-impact-of-covid-19-on-tribunal-hearings>

² From April to June 2021, 70% of tribunal decisions about PIP were in favour of the appellant: <https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-april-to-june-2021/tribunal-statistics-quarterly-april-to-june-2021#social-security-and-child-support>

³ In the current financial year, 35% of PIP appeals had been lapsed, up from 29% in the year 2019/20 and 13% overall since PIP was introduced in 2013: DWP, Personal Independence Payment statistics to July 2021

with around 162,000 tribunals receipts received by the First-tier Tribunal in 2019-20.⁴ This research aims to offer recommendations for how the inherent stress of the experience can be mitigated for disabled appellants.

Methodology and limitations

Methodology

Two online surveys were designed with input from advisers and partner organisations, one for advisers who represent appellants at remote First-tier Tribunals and one for appellants themselves. These surveys (which are appended) consisted largely of closed questions, in multiple choice, yes/no or 1-5 (never-always) scale formats. The surveys were promoted through partner organisations and responses were collected between 28 June and 13 August 2021. A paper version was offered on request, although no-one took up this option. Survey respondents were asked if they would be happy to take part in further research. During August and September advisers who agreed either filled in a further online survey, with open-ended questions, or took part in semi-structured telephone interviews. Appellants who agreed took part in semi-structured telephone interviews.

Respondents: appellants

38 people responded to the online appellants' survey. 97% were disabled. 91% had challenged a decision about Personal Independence Payment, with the remainder having challenged decisions about Employment and Support Allowance, Disability Living Allowance or Universal Credit.⁵ 57% of surveys were filled in by the appellant themselves; the remainder by someone assisting the appellant (for example, reading out the questions and clicking the answers given). 50% of respondents had attended a tribunal held by telephone, 29% by video conference. The remainder had either attended a face-to-face hearing or had had a decision made 'on the papers'.

Respondents: advisers

72 people responded to the online advisers' survey. 25% had a disability themselves. 17 respondents (24%) gave a London postcode for their usual place of work, with a wide variety of other locations across England and in Wales and Scotland.

Respondents were asked about tribunals in which they had provided representation since January 2021. They most commonly had experience of challenging PIP (93%), followed by ESA (44%), UC

(published September 2021): <https://www.gov.uk/government/statistics/personal-independence-payment-statistics-to-july-2021/personal-independence-payment-statistics-to-july-2021>. PIP appeals comprise around two thirds of the Social Security and Child Support tribunal appeals:

<https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-january-to-march-2021/tribunal-statistics-quarterly-january-to-march-2021>. A detailed breakdown on the proportion of lapsed appeals is not currently available for other disability benefits.

⁴ <https://data.justice.gov.uk/courts/tribunals/#courts-tribunals-social-security>

⁵ For comparison, 68.7% of social security appeals disposed of by the First-tier Tribunal between Q1 2019/20 to Q1 2021/22 concerned PIP, 6% DLA, 3% ESA and 12.7% Universal Credit (source: <https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-april-to-june-2021/tribunal-statistics-quarterly-april-to-june-2021#social-security-and-child-support>). As this research was targeted at disabled appellants it is unsurprising that percentages skew towards those challenging disability-related benefits.

(38%) and DLA (29%). In terms of format, only one respondent had experience of a face-to-face tribunal since January 2021. 61 had experience of at least one telephone tribunal and most of them did not know which platform they had used. 31 had experience of at least one video tribunal of which the majority (20 respondents) selected the Cloud Video Platform (CVP) as the platform they had most commonly used.

Challenges and small samples

The very low number of responses from appellants may reflect difficulties in reaching them – promotion was generally through partner organisations’ newsletters, social media and immediate networks, with only appellants who had given their email address and the appropriate contact permission to an advice agency receiving a personalised invitation to take part. Digital literacy may have been another limiting factor: we offered a paper version of the appellant survey but promotion was by email and internet and no one took this up. Many appellants have complex lives, and may also be reluctant to fill in “another form” given experiences of interaction with government systems through forms. Due to the low overall numbers, we have not broken down the results by, for example, the format of the remote tribunal attended; comparisons between telephone and video hearings are only drawn from the advisers’ survey. We also managed to hold follow-up interviews with only a low number of appellants (six) – again this reflects appellants’ complex lives and the precise barriers which appellants face interacting with benefits and appeals systems. We did not want to require detailed questioning about the nature of appellants’ disabilities or health conditions as we felt this was intrusive. We are aware this means we have not been able to consider the issue of reasonable adjustments, which is evidently important. We expect that the ongoing HMCTS evaluation will look at this in more depth and look forward to its findings. This might be particularly relevant to appellants who need interpreters, and we know that elsewhere it has been recommended that any remote hearings should be used with caution where parties require the use of an interpreter.⁶

The low number of responses from advisers may reflect difficulties in reaching them, but also the pressures many advisers are currently under. Anecdotally we have also heard of current “survey fatigue” among voluntary sector employees, as the pandemic prompts a wave of research in various areas. However, it should be borne in mind that a large proportion of respondents had provided representation in multiple tribunals, so the sample is slightly wider than at first glance. Although 58% had only attended between one and five tribunals since January 2021, 13% had attended 21 or more. Assuming the lowest figure for each band (for 1-5 tribunals we assume 1, and so on), respondents had collective experience of at least 387 tribunals.

14 advisers went on to complete our further survey (with the opportunity to give longer answers). A further 10 advisers took part in semi-structured interviews.

Nature of samples and how this may affect results

Appellant research

A significant proportion of respondees (43%) were helped to fill in the survey, which may have affected the results (as they may have changed their answers to what they thought the person

⁶ <https://www.thelegaleducationfoundation.org/articles/tlef-research-reveals-the-impact-of-covid-19-on-tribunal-hearings>, p20

helping wanted to hear). On the other hand, more than half the respondents managed it themselves; combined with the largely digital promotion of the research, we acknowledge that the sample is likely to be biased towards more technologically confident appellants. 91% of respondents had challenged a decision about PIP and 82% had won their appeals – this is broadly consistent with outcomes for these tribunals (from April to June 2021, 70% of tribunal decisions about PIP were in favour of the appellant⁷). However, it may have affected respondents’ perceptions of the tribunal experience.

Most respondents (79%) had a representative or adviser, which is unsurprising given the dissemination of the survey through partner organisations. However, it does not reflect the situation overall where many appellants are unrepresented. Everyone in our survey who had one said having an adviser helped (89% said it helped; comments included “If I had no representative I would not have done it”, and “My rep was a great comfort to me”) – so experiences of our respondents may be more positive than appellants as a whole. LEF recommendations highlighted the importance of representation in deciding which format of tribunal should be used. We therefore confine our recommendations to represented appellants.

Appellant and adviser research

The research was carried out between June and September 2021. Although many pandemic-related restrictions were officially lifted in July, many of the experiences both advisers and appellants were reflecting on had taken place with them in place. Furthermore, many advice agencies and public services were still operating very differently to how they did before the pandemic and had not returned to face-to-face advice, meaning claimant journeys throughout the process would have been quite different, with telephone advice and assessments as well as remote tribunals. This may also have affected the way people viewed the options for the future.

Findings

Overall perceptions of remote hearings

It has been suggested that remote tribunals might be better for disabled people than face-to-face hearings, attending which can be difficult due to physical and mental health conditions. Both the appellants’ and advisers’ surveys asked questions designed to elicit general views on whether remote tribunals were a good option. Findings were somewhat mixed.

Positive perceptions

Some results give a positive impression of remote tribunals. When asked if they would have preferred a face-to-face hearing, the majority (63%) of appellants said no. However, it is important to remember here the nature of the sample (represented appellants, with access to technology); given this it is perhaps more telling that 37% would have preferred a face-to-face hearing.

⁷ <https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-april-to-june-2021/tribunal-statistics-quarterly-april-to-june-2021#social-security-and-child-support>

Many advisers agreed with qualified positive statements about remote tribunals. 85% agreed they were less stressful for 'some' appellants, and 80% said they made it easier for 'some' appellants to access their rights.

Negative perceptions

These positives were counterbalanced by concerns. 69% of advisers agreed that "holding tribunals remotely makes it more difficult for some of my clients to access their rights", and 58% considered "Attending a tribunal remotely is more stressful for some of my disabled clients than attending in person". In an interview, an adviser from Stockport mentioned the example of a client with sensory and learning disabilities, who struggled to understand how the tribunal was going to work – in person the adviser felt the tribunal would have quickly established who was able to speak on his client's behalf.

One key point that some advisers raised in interviews was that although some appellants preferred telephone, as advisers they thought this format was not in the appellants' best interests. For example, the tribunal cannot pick up on any non-verbal signs of distress from the appellant. Serious concerns were also expressed about the potential for the remote format to lead to less favourable outcomes for appellants; these are addressed separately in the 'Impact on Outcomes' section below.

Accessibility

The advisers' survey asked whether advisers agreed that "Some disabled clients are unable to attend a face-to-face tribunal, but can attend a tribunal held remotely". 74% (n=68) agreed. The survey did not ask specifically about reasonable adjustments to either face-to-face or remote tribunals; responders may or may not have taken them into account. It is also important to note again the context of tribunals taking place under Covid restrictions, which may have affected answers to this question. At least some of the appellants interviewed noted they had been shielding. The advisers' response was also counterbalanced by the 54% of advisers surveyed who agreed that "some disabled clients are able to attend face-to-face tribunals but cannot participate in a tribunal held remotely".

Problems with remote hearings

Respondents to both the appellants' and advisers' surveys were asked which format of remote hearings they had experience of (telephone hearing, video hearing where appellant dialed in by phone, and full video hearing). Due to the very low numbers of appellants who responded, we have not broken down the results of this section by hearing format, other than to exclude those whose hearings were face-to-face or decided on the papers. Advisers were asked to comment separately on their experiences of the different formats they had experienced. 61 advisers had experience of at least one telephone tribunal, 15 advisers had experience of at least one video tribunal with their client on the phone, and 20 advisers had experience of at least one video tribunal with their client joining by video.

Difficulties understanding joining instructions

We did not ask appellants specifically about the instructions they received on how to join the tribunal. Difficulties with them were mentioned in advisers' comments in the further survey, and commonly selected in the initial advisers' survey:

- 61 advisers had supported clients attending telephone tribunals. Thinking about those tribunals, 38% said their clients had found it difficult to understand the instructions on how to join the call.
- 15 advisers had supported clients who had dialed in to video tribunals. Thinking about those tribunals, 33% said their clients found the instructions on how to join the call difficult to

understand. In a separate question, 33% gave difficulty understanding the instructions as a reason their clients had not joined by video (the most popular reason chosen was “my client(s) weren’t confident using the video conferencing software” – 53%).

- 20 advisers had supported clients who had joined video tribunals by video. Thinking about those tribunals, 45% said their clients had found it difficult to understand the instructions on how to join the call.

Connection and communication problems

Appellants reported fewer problems in this area than advisers. This may reflect the differing nature of the samples; many advisers would have been thinking about multiple tribunal experiences, supporting clients with a range of capabilities. Because they responded to an online survey, the majority without assistance, the sample of appellants (each of whom had attended only their own tribunal) is likely more comfortable with technology than the overall cohort of appellants.

Of the 30 appellants who had experienced a remote tribunal, 14% (4 people) said they could not hear everything that was said and 11% (3) said they could not be heard by all the people at the tribunal. A more significant minority (22%/6 people) of appellants reported connection problems.

In contrast, advisers were much more likely to identify communication and connection problems. Perhaps unsurprisingly, clients having connection problems were most commonly reported with reference to video tribunals where clients had joined by video; clients having difficulty hearing and being heard were most commonly reported with reference to tribunals held by phone. Advisers were asked to indicate which problems had been encountered by any of their clients.

- 61 advisers had supported clients attending telephone tribunals. 41% (25 advisers) said that in those telephone tribunals, clients had found it hard to hear what was said and 30% (18 advisers) said clients had found it hard to be heard. 39% (22 advisers) said their clients had had connection problems.
- 15 advisers had supported clients who had dialed in to video tribunals. Thinking about those tribunals, 20% said their clients had found it hard to hear what was said, 7% said their clients had found it difficult to be heard and 20% said their clients had experienced connection problems.
- 20 advisers had supported clients who had joined video tribunals by video. Thinking about those tribunals, 20% said their clients found it hard to hear what was said, 15% said their clients had found it difficult to be heard and 50% said their clients had experienced connection problems.

In the advisers’ further survey, a Legal Representative from London gave an example of the impact of connection problems: “Technical difficulties - the video platform did not work for any parties in my last hearing, causing our client a great deal of stress and delaying the hearing by 20 minutes.”

Communication between clients and advisers

Of the 26 appellants who attended a remote tribunal and had a representative, 9 said they were unable to communicate with their adviser during the tribunal. Among the 20 advisers who had supported clients who joined tribunals by video, 55% said they could “always” or “often” communicate with their client when the client was on video; for video hearings with the client on the phone (which 15 advisers had experienced) this dropped to 46%, and it dropped again to 43% of the 61 advisers commenting on tribunals held by telephone. In interviews advisers talked about clients struggling to follow proceedings, and difficulties caused by the adviser not being able to

physically indicate points in papers. One adviser also said she felt the inability to be physically with the clients during hearings, able to and reassure them through nodding, facial expressions, and quiet verbal encouragement impacted her ability to support her clients.

Appellant stress

60% of appellants who attended remote tribunals said they became stressed or upset. Across all three remote formats (telephone, video with appellant on phone, and video with appellant on video), their client becoming stressed or upset was the problem, which advisers most commonly ticked. This broke down as follows across the different formats: 73% of advisers thinking about telephone tribunals said they had experienced their client became stressed or upset, 50% of advisers thinking about video hearings with their client on the phone, and 59% of advisers thinking about tribunals by full video link.

The survey asked appellants whether they had been worried about a lack of privacy for the tribunal, and the vast majority (93%) of those who responded (29) said no. However 34% of appellants said yes when asked if they had felt isolated or alone. This is striking given that almost all those surveyed had been represented at the tribunal.

Of course, the tribunal situation is inherently stressful for appellants, so these results will not all be attributable to the tribunal having been held remotely. Because we asked about the period from January-August 2021, very few respondents to either survey had taken part in any physical tribunals during that time so we cannot compare.

Breaks and adjournments

Breaks or adjournments might be needed in order for the adviser and client to communicate, or for the client's physical or emotional comfort. The survey asked advisers how often they had been able to request breaks or adjournments. Thinking about video tribunals where their client had joined by video, 58% of advisers said they had 'always' been able to request this and another 11% said they had 'often' been able to. In contrast, for telephone hearings, only 31% of advisers said 'often' and 20% said 'never', which is clearly concerning.

Respect and courtesy from judges and panels

The vast majority of both appellants and advisers were positive about this. 88% of appellants responded "yes" to "did the panel treat you with respect and courtesy?". Across all experience of remote tribunals, over 70% of advisers said the panel treated them and their clients with respect and courtesy "always" or "often". There were also some generally positive comments from advisers who took part in the further survey (when asked what advice they would give to judges), for example:

"Most judges have been great, the odd one has maybe not been as understanding of the difficulties the remote hearing has presented to appellants with severe and enduring mental health problems. More patience please. Other than that the judges have been fantastic and very understanding." (A Welfare Benefits Adviser working in Liverpool and Sefton)

However, some extremely negative experiences were also reported –

- "The GP on the panel treated me as though I were a criminal [...] I felt humiliated and shamed by his question about my honesty and integrity. Overall I found the tribunal distressing and degrading to the point where I wanted to kill myself." (from appellant, London, in initial survey)

- “I was traumatised from the experience and have lost all confidence as the judge called me a liar. I was belittled and humiliated and am now psychologically fragile.” (from appellant, Essex, in initial survey)
- “When I explained the process to one client, and sat in with them during a phone hearing, they [the panel] belittled and humiliated by [sic] client. It was awful and I was shocked and embarrassed for the client. Everything I had prepared them for, went out the window. The entire panel was rude” (from a Disability Specialist/Advocate, Essex, responding to advisers’ further survey)

When we asked in the advisers’ further survey “what makes the experience worse for clients whose cases go to remote tribunal?”, attitudes were commonly mentioned. A welfare benefits adviser from Glasgow wrote that “Sometimes panel members appear to feel sufficiently buoyed by the added ‘distance’ that they can be less polite, interrupt appellants, and judges often appear to have taken a proverbial step back and take less control over proceedings. I’ve had clients far more distressed than I expected they would have been from my experience of supporting others at face-to-face hearings.” A Disability Specialist/Advocate from Essex wrote about “the rude comments from judges and GP/panel. No compassion or understanding is shown from the panel”.

Appellant understanding and participation

This is an area of concern. Advisers were asked how often, in their experience, their client had found it easy to understand and participate in the tribunal. They were asked separately about each format of hearing they had experienced (telephone, video with the appellant dialing in, and full video) and offered a scale of 1-5, with 1 being “never” and 5 being “always”. Across the different formats, the highest score for “always” was 25%. Telephone hearings scored particularly badly for this, with only 7% of advisers when considering telephone hearings saying their clients “always” found it easy to understand and participate. Video tribunals were better, but still low (23% “always” for the client dialing in to a video tribunal and 25% “always” for the client being on video).

The appellant survey asked “were you able to participate effectively in the tribunal and have your say?”. Notably, and seemingly in contrast with the results above from the advisers’ survey, 76% of respondents answered positively. This may reflect differing expectations from advisers and clients about what constitutes effective participation.

Other problems raised by advisers

In answers to free text questions in the initial survey, further adviser survey, and in interviews, numerous advisers mentioned, unprompted, problems related to the appellant and their body language not being visible. In telephone hearings, there is no immediate way of recognising non-verbal cues. A welfare benefits adviser from Middlesbrough mentioned shaking and lack of eye contact as visual evidence of mental health issues, which simply would not be seen in telephone hearings and would be far less obvious even by video. When distressed, appellants may not feel able to explain this to the tribunal, a problem especially relevant to appellants with mental health conditions.

Several advisers also said that remote tribunals meant they were no longer familiar with the judges involved and could not get used to their ways of working.

One Welfare Rights Adviser in Wales mentioned in interview that she felt the ‘false sense of informality’ didn’t help her clients – this chimes with another adviser’s survey response regarding advice to clients preparing for remote hearings: “remind them this is still a formal tribunal and the panel will expect them to recognise this” (a Welfare Benefits Adviser in London).

Respondents' advice

Advice for advisers

Many advisers, when asked for advice for their peers providing representation in remote hearings, said that their suggestions would be much the same as for a face-to-face hearing in terms of submissions, research and preparing clients. Several suggested being even more diligent with paperwork, some in an attempt to get a favourable decision “on the papers”, without the need for a full hearing, and others because they felt that during a telephone hearing, without being able to see the appellant, the tribunal tended to be far more reliant on documents. Some advisers considered tribunals had readily been adjourned for lack of full medical evidence, when a face-to-face hearing would likely have been able to go ahead.

Several advisers also recommended establishing a channel of communication between the adviser and the client during the hearing if at all possible.

Advice for appellants

Some of the advice offered from advisers for appellants might have been equally applicable for a face-to-face hearing – for example, listening carefully to the questions, thinking through your answers beforehand. However, other advice was specific to remote hearings. Much focused on physical preparation - finding a quiet space, being comfortable and having drinks and snacks on hand and papers laid out. Several advisers said they suggested that the appellant should have someone with them for moral support – a role that might have been played by the adviser himself or herself if the hearing had been face-to-face. A welfare rights adviser in Bristol told us she had realised that some clients interpreted the guidance about an undisturbed space to mean they should be on their own – she now explicitly clarifies that clients can have somebody with them. Appellants' advice to others in their position also mentioned having someone else present for emotional support.

Advice for judges

The advisers' further survey asked respondents what suggestions they would make to judges at remote First Tier Tribunals, in order to ensure access to justice for disabled people. Most suggestions focused on judges' attitude and manner, and on giving clear information to appellants, for example:

- “Advise appellants they can request a break if need be (having this option reduces stress, anxiety and helps with any physical issues); be respectful, warm and clear (most judges are).” (a Welfare Benefits Adviser, London)
- “Show complete understanding, empathy and reassurance to the disabled person. To explain in ways that they can understand without making the client more anxious and distressed. To take more notice of evidence detailing conditions and to try and think how they would feel dealing with conditions 24 hrs a day, 7 days a week. To show empathy towards side effects and feeling drained and lethargic on a daily basis. To see beyond the person and take note of invisible conditions.” (a Disability Specialist/Advocate, Essex)
- “Set out exactly what is going to happen first of all, to the client. It reassures them a little and can give it the gravitas needed (especially if home life is chaotic & they're struggling to find somewhere quiet to take part)” (a Welfare Benefits Adviser, North Wales)

Negative impact on outcomes

Though we did not ask advisers to comment on how the format of the tribunal might affect the outcome, many nonetheless expressed concerns in interviews and in the survey where there was an opportunity for free text comments. They said that although many clients preferred a telephone hearing as they saw it as less intimidating, as advisers they felt that this format could put their clients at a disadvantage. In face-to-face tribunals, in their experience, being able to see the appellant demonstrates powerfully to the judge and panel the severity of the person's condition(s), whether physical or mental. Furthermore, being at home in comfortable surroundings might make the appellant seem much more 'capable' than they are in other situations.

For example, a Welfare Rights Officer in Hull whom we interviewed talked about a remote hearing having been a "double edged sword" for her client, as the client had felt less anxious than they would have done at a face-to-face hearing, but in her opinion the fact that the judge could not see the client "in a true light" meant that the outcome would have been better had the tribunal taken place in person. Similarly, a Mental Health Welfare Rights Officer in the West Midlands, with experience of multiple remote hearings, told us that he worried clients might prefer a telephone hearing for their own reasons, but they would then lose out on the impact of the panel's observation.

Responses to "remote accompanied" idea

Consultation with partners when designing the surveys had thrown up the suggestion of advisers being in the same space as their clients during remote tribunals, perhaps at advice agencies' premises or other venues with an internet connection and suitable IT equipment. In this report we refer to this as the "remote accompanied" idea. In both the advisers' and appellants' surveys, we explained this idea and asked for views.

We asked appellants whether this idea would be helpful for them personally. 59% (20 people) said it would be helpful and 35% (12 people) didn't know. Those who said it would be helpful were given a multiple-choice list of benefits; the most commonly chosen were that it would make it easier for the appellant to talk to their adviser (77% of those who said the idea would be helpful), followed by being less stressful than joining from home and having someone with them for emotional support (both 73% of those who said the idea would be helpful).

We asked advisers if they thought any of their clients would benefit from the remote accompanied idea. 35% of respondents to this question (7 people) said a lot of their clients would benefit and 40% (8 people) considered that some would. We also asked advisers whether they had tried working in this way; 85% per cent (N=20) had not. This may reflect the prevalence of home working during the time period covered by the survey. We also asked advisers whether their organization could provide this option for clients who wanted it. 35% said they could and 40% said they might be able to – this was obviously a somewhat hypothetical question and again may have been affected by considerations around pandemic restrictions.

How this research intersects with evidence from judges

The Legal Education Foundation (TLEF) undertook extensive research about judges' experiences of tribunals held by telephone and video.⁸ Of course, judicial office holders have a different perspective from that of appellants and their advisers; indeed, some respondents to TLEF's survey called

⁸ <https://www.thelegaleducationfoundation.org/articles/tlef-research-reveals-the-impact-of-covid-19-on-tribunal-hearings>

explicitly for more research on appellants' experiences. It is not appropriate to attempt a like-for-like comparison of the two pieces of research here, due to differences in scale (TLEF's research had a much larger sample, with 486 respondents from the Social Entitlement Chamber) and in the questions asked. However, it is helpful to highlight some common themes as well as perspectives from TLEF's research that may shed additional light on findings from this research. All references below are to respondents to TLEF's research from the Social Entitlement Chamber unless otherwise stated.

- TLEF respondents, similarly to advisers who participated in this research, felt that the remote format created practical and attitudinal barriers for some appellants but reduced them for others. TLEF respondents highlighted some groups of appellants for whom the remote format was likely to exacerbate practical barriers: those with mental health issues, learning disabilities, on low incomes, with hearing and sight problems, and for whom English is not their first language.⁹
- TLEF respondents identified similar positive aspects for some appellants from remote tribunals. TLEF asked tribunal judges across a range of Chambers whether they felt telephone hearings were effective or ineffective in allowing parties to participate and put their case. Respondents from the Social Entitlement Chamber were among the most positive respondents, with 13% saying Effective and 55% saying Mostly effective.¹⁰ This does however leave more than one third of respondents who were less positive. TLEF's report quotes respondents from that Chamber who said that, provided there were no technical difficulties, some appellants were more relaxed than if they had had to travel to a face-to-face hearing, and this made them better able to communicate with the tribunal.¹¹
- However, TLEF respondents reported a range of concerns about tribunals held remotely, which also echo the findings of this report:
 - The importance of appellants having representation at remote tribunals, both in terms of identifying when they are vulnerable and may require adjustments, and making the hearing easier to conduct remotely¹².
 - Difficulties with clients and representatives not being able to communicate between themselves; this was identified as a barrier to appellants being able to present their case effectively¹³.
 - The lack of visibility of appellants was mentioned as making it harder to identify when appellants were distressed during tribunals¹⁴, as well as potentially giving a misleading impression of the severity of appellants' conditions¹⁵. Interestingly, this was mentioned in the context of video as well as telephone tribunals – TLEF respondents cited technical issues, such as picture/internet quality, along with the need to undertake multiple tasks at once, making it harder for judges to focus on appellants during the hearing, as contributing to this.

⁹ Ibid, p50

¹⁰ Ibid, p79

¹¹ Ibid, pp71-4

¹² Ibid, p65

¹³ Ibid, p62

¹⁴ Ibid, p.74

¹⁵ Ibid, pp58-9

- TLEF respondents also mentioned that sometimes the apparent informality of the situation, with everyone at home, could stop appellants presenting their best case¹⁶.
- Given the concerns reported by advisers and appellants in this research, it is interesting to note that one respondent to TLEF’s research commented that the lack of visual cues might give appellants a negative impression of tribunal members – appellants would not see encouraging facial expressions, nodding etc. and so tribunal members might come across as less empathetic.¹⁷
- It is also interesting to note concerns from TLEF respondents about the effect of remote tribunals on judges’ wellbeing (remote tribunals being more tiring and stressful than face-to-face hearings), the burden on them and the need to adapt their skillset¹⁸. 77% of respondents from the Social Entitlement Chamber said that overall, telephone hearings were worse for judges than face-to-face tribunals¹⁹. 60% said the same of video tribunals (the improvement over telephone tribunals is noticeable)²⁰. Although our research focuses on the experience of appellants, it is arguable that procedures that cause difficulties for judges might have a knock-on negative effect on appellants.

Recommendations

Which format should be used?

- Hardly any unrepresented appellants participated in our research, and obviously advisers were only commenting from their experience of representing people. It is therefore difficult for us to make recommendations about the format of tribunals that should be offered to unrepresented appellants. We note that many of both the appellants and advisers we spoke to emphasised the crucial role of representatives at remote tribunals (for example, one client said in interview “you need an adviser or it’s wasting everybody’s time”). We also note that similar points were made by judges in TLEF’s research, and that TLEF researchers recommended that telephone or video tribunals should be used with caution for unrepresented appellants.
- For represented appellants (clients), it is essential that there is a genuine choice of format, and that this includes a face-to-face tribunal, within a reasonable timeframe, for anyone who wants one. Forms asking appellants to indicate their choice of format should:
 - present the options neutrally, rather than asking appellants for reasons why they are unable to join a video hearing
 - set out what a remote hearing will entail, rather than waiting until one has been chosen to send this information

¹⁶ Ibid, p78

¹⁷ Ibid, p71

¹⁸ Ibid, p89

¹⁹ Ibid, p90

²⁰ Ibid, p91

- make clear that appellants can change their mind about their preferred format later (this would allow them to take into account information guidance from their advisers about the different options).
- In terms of the better format of remote tribunals, between telephone and video hearings, evidence is mixed. Advisers reported more problems with telephone than video hearings in terms of clients' experiences. Some also expressed concern, which has been echoed elsewhere, that not being seen could mean the appellant's capabilities could be overestimated with a knock-on effect on outcomes.²¹ For these reasons, we recommend greater availability of video tribunals, in keeping with our recommendation that all represented appellants should be offered a full choice of format.
- Barriers which clients face in accessing video tribunals should also be tackled, through:
 - Easier joining instructions and more information about how a video tribunal will work (see more detailed recommendation below)
 - Advisers setting out the potential disadvantages of telephone tribunals, and trying to increase clients' confidence with video through trial runs, etc
 - Exploring the 'accompanied remote' option further, on which see below.
- We are reluctant, without further evidence of the effect on tribunal outcomes, to recommend a prohibition on telephone tribunals for represented appellants in welfare benefits cases at First Tier Tribunals. Evidence from both advisers and appellants suggests that some appellants would be unable or very loath to attend an in-person tribunal, or to take part in a video hearing. In these circumstances a telephone tribunal may be in their best interests.

²¹ It should be noted that some campaigners are calling for "informal observation" not to be allowed to be taken into account when assessing disability

How can the experience of appellants at remote tribunals be improved?

The surveys and interviews asked advisers and clients directly for their ideas for how remote tribunals could be improved and their ideas are included here. We have also offered additional ideas in response to the problems identified by the research. These recommendations are ordered by the chronology of the tribunal process rather than by relative importance.

Problem	Suggestion(s) from advisers	Additional recommendation(s) from research authors
<p>Lack of notice and liaison between HMCTS and advisers representing appellants:</p> <ul style="list-style-type: none">• Notice of the tribunal date, and sometimes the bundle, can be sent to appellants with only the minimum two week notice period. Given postal delays, by the time information is cascaded to the adviser, this can leave insufficient time for preparation by the adviser and with the appellant and submission of further evidence.• In some cases lack of engagement between the respondents and representatives in advance means appellants are put through the stress of a tribunal when their case could have been decided in advance if relevant documents were flagged and the subject of meaningful dialogue <p>Lack of liaison regarding scheduling may mean advisers are unavailable, resulting in the tribunal being re-scheduled; this uncertainty and additional delay is stressful for appellants</p>	<ul style="list-style-type: none">• More notice should be given of tribunal dates and bundles should be sent out earlier.• There should be an opportunity/duty for decision makers and representatives to liaise in advance of the tribunal to narrow issues and allow reconsideration of merits once all evidence is in place.• There should be more direct liaison between HMCTS and representatives in advance of tribunal	

	listings being posted where representatives are on record.	
Appellants struggle to understand joining instructions	<p>Information sent to appellants should be clearer</p> <p>Processes (e.g. phone calls from clerks in advance of hearings) should be more consistent so that advisers can confidently tell their clients what to expect will happen when</p>	<p>From a recent example seen by researchers (appended), information sent to appellants does now seem to cover some of the points raised by advisers. This example also lets appellants know that it is now possible to make a test call to check that video and audio are working correctly, which is very helpful.</p> <p>However, some problems remain:</p> <ul style="list-style-type: none"> • The format remains very long (6 pages) and text-heavy • Information is not clearly set out, with long sections which combine technical instructions, practical advice and legal rules and requirements • Technical instructions are confusing, partly due to the way they presented and partly due to technical functionality which has to be explained (for example, “when the voice directs you to use the ‘pound’ key, it is a reference to what is sometimes called the ‘hash’ key or #”). • It would be better to have a separate section about how appellants can prepare, which could include encouragement to have someone with them for support, along with other practical advice currently scattered throughout the document, such as keeping phones charged, and finding a quiet space. <p>There is a YouTube video available through the government</p>

		<p>website which sets out the technical process for joining a video hearing (it is flagged as outdated as it still refers to joining via Skype, which no longer happens). 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.</p> <p>We recommend that this could be updated, and complemented by videos of mock video and telephone tribunals so appellants have a better idea of what to expect. In addition, this video appears to have been viewed very few times – a direct link to it should be included in written joining instructions.</p>
Problems with connection and communication can increase stress for appellants and undermine the effective functioning of the tribunal		<p>The recent provision of a facility for appellants to test the connection in advance of the tribunal should help. It is vital that tribunals that encounter connection and communication problems can be rescheduled for face-to-face hearings in a timely way. In addition, information could be provided about what will happen if connection and communication problems do occur on the day, to ease appellants' anxiety.</p>

<p>Numerous difficulties can mean the tribunal takes more time than allotted, resulting in either a rushed and stressful process, or delays to later tribunals which are distressing for those appellants</p>	<p>Longer timeslots should be scheduled for remote hearings</p> <p>Clerks should proactively communicate delays to appellants and advisers rather than leaving them awaiting the call for prolonged periods of time</p>	<p>Additional time could also help reduce concerns about judges' wellbeing.</p>
<p>Remote tribunals can be a distressing experience for appellants. Although responses regarding judges' and panels' courtesy and respect were generally positive, we came across some accounts of very distressing episodes</p>	<p>Advisers should advise their clients to have someone with them for emotional support</p> <p>Judges and panels should be empathetic, remembering that without body language/facial expressions, tone is crucial in the effect questions can have on appellants. One adviser suggested that judges should have training in the form of role play, being asked personal questions about their health as to better understand possible effects of such questioning.</p> <p>Advisers should be assertive in checking in with their clients and asking for breaks if needed.</p>	<p>Guidance sent out by HMCTS now explains that appellants <i>can</i> have someone with them for support during the tribunal. This should be amended to a positive recommendation that appellants <i>should</i> be supported in remote tribunals if practicable (as above).</p> <p>Particularly if they cannot see the appellant and therefore are not aware of physical signs of distress, judges should ensure they check on appellants' wellbeing and proactively offer breaks.</p> <p>Given judges' concerns about the impact of remote tribunals on their wellbeing, additional training and support for them might also improve appellants' experiences.</p>

Without being able to see the appellant, judges may underestimate the severity of their condition – particularly if the appellant is more comfortable/calm at home than they would be in other situations		<p>Additional research should be conducted specifically into remote tribunal outcomes compared to face-to-face.</p> <p>Meanwhile judges should be aware of this potential pitfall - it is good to see from other research that many of them acknowledge it.</p>
---	--	---

In addition, we recommend that the idea of clients joining a remote tribunal from the same location as their adviser be explored further. This initial research suggests that it could offer potential benefits including: access to technology (and thus removal of barriers to video rather than telephone hearings), and emotional support and communication between appellants and representatives. The practicalities of offering this option should be investigated; not all advice agencies will have a suitable space so funders and community partners may need to help. It is unlikely this solution could be made universally available, and important to remember that there are some clients who would struggle, or be very reluctant, to access it. It may however work well for some as a partial solution.

Conclusion

This limited piece of research suggests that welfare benefits tribunals conducted by telephone or video conference may be an attractive option for some appellants, who find the idea of a face-to-face tribunal intimidating or feel they would struggle to attend one. However, the sample of appellants who took part is likely to disproportionately include those who have more access to and ability and confidence with digital technology. This research, particularly the evidence from advisers, also identifies frequent problems with telephone and video hearings. These problems, firstly, seem to cause considerable stress and distress to appellants. Secondly, although this research was not designed to focus on the issue, many advisers expressed concerns that may undermine the fairness of hearings conducted remotely.

Given that nearly all participants in this research were either appellants who had representation, or representatives themselves, it is difficult for us to make recommendations regarding the formats of tribunal, which should be offered to unrepresented appellants. Given the importance of the adviser role, as expressed by both appellants and advisers in our research, it is concerning to note from other research that 44% of judges from the Social Entitlement Chamber said the move to telephone hearings had resulted in fewer appellants being represented, and 40% said the same regarding video hearings²² - statistics should be collected on this and greater investment made in specialist advice and representation for people appealing welfare benefits decisions.

For represented appellants, our most important recommendation is that they should be offered an informed and genuine choice of the format in which their tribunal takes place. This means that face-to-face tribunals must be made increasingly available, as pandemic restrictions lift. Delays need to be tackled so that appellants' free choice is not undermined by extremely long, or uncertain, waits for face-to-face hearings. If connection and/or communication problems mean a planned remote tribunal cannot proceed, it is vital this can be rescheduled as a face-to-face hearing in a timely way.

We have also outlined recommendations to improve the experience of represented appellants whose cases are heard at remote tribunals. These include changes in practice by judges, panels and advisers, as well as actions for HMCTS.

Given the high success rates for appellants challenging benefit decisions at the First-tier Tribunal, and the importance of those decisions to claimants' quality of life, it is vital that tribunals work effectively and give appellants a fair hearing. In answer to a Parliamentary Question in 2016, the then Minister said that 66% of PIP decisions overturned at tribunal were overturned because of oral evidence²³. Furthermore, given the high numbers of appellants who already have mental health issues, it is important to minimize the additional stress and distress caused by the tribunal process. Further, larger-scale, research is clearly needed; however our recommendations could be adopted meanwhile, and we look forward to discussing them with policymakers and practitioners.

²² <https://research.thelegaleducationfoundation.org/wp-content/uploads/2021/05/FINAL-Tribunal-Judges-Survey-Report-02-June-2021-.pdf>, p66 and p68

²³ <https://questions-statements.parliament.uk/written-questions/detail/2016-05-20/37773>

Acknowledgements

We would like to thank Trust for London, whose partnership with IPR made this research possible. We are also grateful to the following organisations for sharing their expertise and helping to distribute the surveys:

Citizens Advice Islington
Disability Action in Islington
Disability Rights UK
Islington Law Centre
NAWRA (National Association of Welfare Rights Advisers)
RightsNet
Z2K (Zacchaeus 2000 Trust)

Appendices

Appendix 1: online surveys

Appellants' survey

<https://www.ipradvice.org.uk/wp-content/uploads/2021/10/Appellant-survey.pdf>

Advisers' initial survey

<https://www.ipradvice.org.uk/wp-content/uploads/2021/10/Initial-adviser-survey.pdf>

Advisers' further survey

<https://www.ipradvice.org.uk/wp-content/uploads/2021/10/Advisers-further-survey.pdf>

Appendix 2: sample of information sent to appellants in advance of a telephone or video tribunal

Telephone hearing

<https://www.ipradvice.org.uk/wp-content/uploads/2021/10/HMCTS-Telephone-hearing-letter.pdf>

Video hearing

<https://www.ipradvice.org.uk/wp-content/uploads/2021/10/Video-hearing-guidance.pdf>

Video information about video hearing



6-9 Manor Gardens, London N7 6LA
T: 020 7561 3685
E: info@ipradvice.org.uk
W: www.ipradvice.org.uk
Charity registration no. 1077688