

PILOT PRACTICE DIRECTION: CONTINGENCY ARRANGEMENTS IN THE FIRST-TIER TRIBUNAL AND THE UPPER TRIBUNAL

Background

1. During the Covid-19 pandemic, it may be necessary for tribunals to adjust their ways of working to limit the spread of the virus and manage their workloads appropriately. I have therefore decided to issue this Practice Direction on a pilot basis for a period of six months, although it may be reviewed within that period should it become inappropriate or unnecessary and may be revoked at any time.
2. The Lord Chancellor has approved the issue of this Practice Direction in accordance with s23 Tribunals, Courts and Enforcement Act 2007.

Scope

3. This Practice Direction applies to all appeals and applications in the First-tier Tribunal and the Upper Tribunal, save for paragraphs 10 and 11 which apply solely to the First-tier Tribunal Property Chamber.

Decisions on the papers without a hearing

4. Where a Chamber's procedure rules allow decisions to be made without a hearing, decisions should usually be made in this way, provided this is in accordance with the overriding objective, the parties' ECHR rights and the Chamber's procedure rules about notice and consent.

Triage

5. In many tribunal jurisdictions, a hearing is required unless the parties consent to a determination on the papers. To deal more efficiently with cases in which a successful outcome for the applicant or appellant is highly likely, Chamber Presidents may decide to follow the following scheme to 'triage' appeals and applications for some or all of their jurisdictions where paper determinations are possible with the parties' consent:
 - (a) Where the parties have not already consented to a determination without a hearing, the tribunal may assess a case on the papers.
 - (b) If the tribunal considers it could decide the matter without a hearing, it will provide a provisional decision to the parties.
 - (c) The parties will then be asked whether they consent to the tribunal making a binding decision on the papers that is in the same terms as the provisional decision.
 - (d) If one or both of the parties confirm that they require a hearing, a hearing will be listed (which may be conducted remotely).
 - (e) If the parties consent to a paper determination (or do not object, if there is a provision in the Chamber's rules that allows for non-objection), the tribunal will issue a final decision in the same form as the provisional decision, unless:
 - (i) it considers that it made an error in relation to the provisional decision; or
 - (ii) the circumstances have materially changed since the provisional decision was made.
 - (f) If paragraph 5.(e)(i) or (ii) above applies, the tribunal shall either provide the parties with a revised provisional decision and follow paragraph 4.(c) onwards in respect of the new

provisional decision, or list a hearing. In either case, the tribunal will explain to the parties why it decided not to issue the first provisional decision.

Hearings

Paragraphs 6-9 apply where a tribunal decides in a particular case that a hearing is necessary.

Remote hearings

6. Where it is reasonably practicable and in accordance with the overriding objective to hear the case remotely (that is in any way that is not face-to-face, but which complies with the definition of 'hearing' in the relevant Chamber's procedure rules), it should be heard remotely.
7. For the avoidance of doubt, where a tribunal decides that a hearing will take place remotely, references in the Chamber's procedure rules to a 'hearing' will apply to that remote hearing and references in the Chamber's procedure rules to a party's entitlement to attend a hearing shall be such participation as may be directed.

Hearings in a party's absence

8. Where a party fails to attend a hearing without an application made in advance to adjourn or postpone the hearing, and the relevant Chamber's procedure rules allow the tribunal to continue with the proceedings in the party's absence, the hearing may proceed on that basis provided this is in accordance with the overriding objective.
9. Where a party fails to attend a hearing without an application made in advance to adjourn or postpone it, a request by that party to set aside a decision made in their absence will not usually be granted if the decision fully upholds or allows their appeal or application.

Inspections

10. Inspections of properties and land under the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 are suspended with immediate effect. To mitigate the impact of the suspension, the Tribunal may consider the following:
 - (a) Parties may be permitted to produce photographs and/or videos of the condition or other relevant aspects of the property or land;
 - (b) External "drive by" inspections by Tribunals may be permitted in appropriate cases;
11. If an inspection is essential to deal with the case fairly and justly and in accordance with the overriding objective then the case should be stayed pending the amendment or withdrawal of this Practice Direction.

General

12. Insofar as compatible with the efficient administration of justice, the tribunals will take into account the impact of the Covid-19 pandemic when considering applications for the extension of time for compliance with directions and the postponement of hearings.

Sir Ernest Ryder

Senior President of Tribunals

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