

FIRST-TIER TRIBUNAL - SOCIAL ENTITLEMENT CHAMBER - ASYLUM SUPPORT ARRANGEMENTS DURING THE COVID-19 PANDEMIC

THE PRACTICE DIRECTION: CONTINGENCY ARRANGEMENTS

1. This Guidance is issued pursuant to the Practice Direction made by the former Senior President of Tribunals: *Pilot Practice Direction: Contingency arrangements in the First-tier Tribunal and the Upper Tribunal* on 19 March 2020 and the subsequent Amended General Pilot Practice Direction made by Vice President of Tribunals and Acting Senior President of Tribunals on 14 September 2020 (the Practice Direction).
2. The Practice Direction states that, 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 to work appropriately. It will expire on 18 March 2021 but may be reviewed again prior to its expiry should it become inappropriate or unnecessary and may be revoked at any time.

THE OVERRIDING OBJECTIVE

3. The Practice Direction and this Guidance are intended to enable the First-tier Tribunal, Social Entitlement Chamber–Asylum Support (FTT–AS) to give effect to the overriding objective during the Covid-19 pandemic. The overriding objective is defined in rule 2 of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (“the Tribunal Procedure Rules”). The overriding objective is “to enable the Tribunal to deal with cases fairly and justly”.

DECISIONS WITHOUT A HEARING

4. Paragraph 4 of the Practice Direction provides that 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.
5. Rule 27 (1) of the Tribunal Procedure Rules provides that the Tribunal must hold a hearing before making a decision which disposes of proceedings unless, each party has consented to, or has not objected to the matter being decided without a hearing; and the Tribunal considers that it is able to decide the matter without a hearing.
6. The Tribunal Procedure (Coronavirus) (Amendment) Rules 2020, creates a new temporary rule 5A which deals with decisions without a hearing. Rule 5A provides that notwithstanding anything in rule 27 of the Tribunal Procedure Rules, the Tribunal may make a decision which disposes of proceedings without a hearing if the Tribunal considers that the following conditions are satisfied:

- (a) the matter is urgent;
- (b) it is not reasonably practicable for there to be a hearing (including a hearing where the proceedings would be conducted wholly or partly as video proceedings or audio proceedings); and
- (c) it is in the interests of justice to do so.

MAKING DECISIONS WITHOUT A HEARING

7. Paragraph 5 of the Practice Direction permits jurisdictions to deal more efficiently with cases in which a hearing would otherwise be required and gives Chamber Presidents the discretion to decide cases without a hearing where appropriate.

8. The Tribunal will therefore proceed on the basis that an appellant who seeks an oral hearing of their appeal will be offered an oral hearing, unless a duty judge provisionally decides as follows:

- (i) the appeal can be decided in the appellant's favour without the need for an oral hearing; or
- (ii) oral evidence would add nothing to the appellant's case; or
- (iii) the tribunal lacks jurisdiction; or
- (iv) there is no reasonable prospect of the appellant's case succeeding.

9. Pursuant to rule 8 of the Tribunal Procedure Rules, where (i) above applies, the duty judge will invite the respondent to provide written submissions on the absence of merit. On receipt of the same, a judge will decide whether it is lawful to bar the respondent.

10. Where (ii) above applies, the duty judge will explain why rule 5A is relevant to the appellant's case. The appellant will be invited to address the conditions in rule 5A and to explain why an oral hearing is a necessary requirement for the appeal to be disposed of fairly and justly.

11. Pursuant to rule 8 of the Tribunal Procedure Rules, where (iii) and (iv) above apply, the duty judge will invite the appellant to provide written submissions on the issue of jurisdiction or the absence of merit. On receipt of the same, a judge will decide whether it is lawful to strike out the appeal.

12. If not striking out or barring a party, the judge will decide whether to direct a hearing of the appeal. This may be an oral hearing or a hearing on the papers. In the absence of a clear indication from the appellant or respondent that an oral hearing is sought and is necessary, the judge will decide the format of the hearing in accordance with the overriding objective, the parties' ECHR rights and the Tribunal Procedure Rules concerning notice and consent.

REMOTE HEARINGS

13. Under Rule 1 of the Tribunal Procedure Rules, a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication is a hearing for the purposes of the rules. A remote hearing may involve a live audio link or a live video link. A live audio link will probably be via *BT Meet Me*. A live video link will probably be via *Cloud Video Platform*. Please check the Judicial Intranet for current guidance.

14. Where a judge considers that a remote hearing is necessary and feasible, the FTT-AS will inform the parties of this and of the intended means of delivering the remote hearing. This will either be in the notice of hearing or in a separate communication. Each of the parties will be directed to respond by email, copied to the other party.

The remote hearing itself

15. A remote hearing will be listed for a specific time and date. You must provide the FTT-AS with an up-to-date contact number. You are required to be ready to proceed, in a quiet place, beside a fully charged and working telephone, 10 minutes before the scheduled time of the remote hearing. The judge assigned to hear the appeal will establish contact with the parties. If an interpreter is needed, the tribunal will make the necessary arrangements and will call them at the same time and any representatives and presenting officers involved.

16. Wherever practicable, the FTT-AS will record the proceedings electronically using its own recording facilities. The parties shall not make an audio and/or visual recording of the proceedings without the judge's express permission. Parties are reminded that under section 9 Contempt of Court Act 1981, it is a contempt of court to record proceedings without consent from the judge. Contempt of court is a criminal offence punishable by up to 2 years imprisonment, a fine or both. In the absence of an audio or visual recording of proceedings, the judge's note of evidence will constitute the record of proceedings.

17. The above requirements may be modified or supplemented, if necessary. The parties are reminded of their obligation under rule 2(4)(b) to cooperate with the Tribunal.

Oral evidence

18. In complex appeals, where it is considered necessary to hear oral evidence to make findings of fact, a judge will issue appropriate directions.

Documents

19. Documents which a party intends to rely on in any proceedings must, where possible be filed electronically, or where this is not practicable, by sending these by post to the FTT-AS within the timescales specified in directions. Documents should ideally be indexed and paginated.

20. In view of the requirement for electronic filing and service, it is important to confine the documentation to be relied upon to what is essential. This includes any documents a party is directed to produce by the tribunal judge. In exceptional cases, where the documents to be provided are few, and the sender does not have access to scanning and email facilities, it may be possible to accept a photo image of the relevant document(s).

INTERPRETERS

21. *The Big Word*, which supplies interpreters for hearings in the FTT - AS, has confirmed it has interpreters available, who are able to provide interpretation services via conference calls to connect with the Tribunal. If an interpreter is required, the FTT-AS will make appropriate arrangements.

PRACTICAL MATTERS

22. To date, all appeals lodged with the Tribunal have been determined in a timely manner and there is no backlog. We have, however, been alerted to the possibility of a substantial increase in cessation appeals. When the number of appeals increase, the judiciary will use its best endeavours to determine appeals as speedily as our available resources permit. If appeals lodged exceed the Tribunal's capacity to determine the same within a reasonable time, we will use rule 5(2)(a) to extend the time required to comply with any rule, practice, direction or to dispose of proceedings.

FINALLY

23. This Guidance may need to be revised from time to time. Please check it regularly. The FTT-AS judiciary and administration thank you for your cooperation and understanding.

Sehba Storey
Principal Judge Asylum Support
2 October 2020