

First-Tier Tribunal, Asylum Support (FTT-AS)

Road-map to Recovery

11/06/2020

Introduction:

Access to justice, the delivery of fair hearings with the minimum of delay and the safety of all who use or work in the Tribunal remain our priorities.

This road-map sets out the Tribunal's response as we enter the next phase of Covid-19 planning. These plans are necessarily fluid and will be constantly revised in view of national and international developments.

We have used a seasonal view, but to some extent the plan and timescales must be seen as aspirational, since changes need to be tested in practice and many elements (such as national travel, the availability of interpreters and the reopening of organisations providing face to face assistance for appellants) fall outside of the Tribunal's control.

The FTT-AS's workload is also largely outside of its own control, since the number of appeals is directly linked to the number of decisions to refuse or discontinue support made by UKVI. The Tribunal is mindful that UKVI intend, during June 2020, to review the existing support provision which, throughout the pandemic, has been at such a level as to drastically reduce the Tribunal's appeal intake. A return to "business as usual" on the part of UKVI would result in a large influx of appeals.

The Tribunal's capacity to respond to any such increased intake is necessarily limited by the reduction in face to face hearing capacity required to keep FTT-AS users, staff and judges safe, the speed at which it is possible to develop fully-functioning remote mechanisms (for both hearings and administration) and a reduction in available human resources, including typing support. We have also observed that telephone hearings tend to take longer than their face to face counterparts and the experience of other Tribunals is that remote video hearings are similarly time-consuming. This will act to reduce our potential throughput.

The Tribunal's work is governed by Practice Directions, Procedure Rules and guidance. The Senior President's Pilot Practice Direction of 19 March 2020 and the Amended Procedure Rules of 10 April 2020 remain in force at the date of this road-map.

Summer 2020:

The FTT-AS will continue to focus on remotely conducted paper determinations and telephone hearings. It is unlikely that any face to face hearings will be conducted during June 2020, whilst risk assessment testing is conducted at Import Building, although special arrangements could be made in wholly exceptional cases where such a hearing is an absolute necessity.

The Tribunal must ensure that waiting rooms for parties; consulting rooms for representatives; offices for presenting officers and interpreters; working space for staff and judges and communal areas are laid out in ways which enable social distancing to be maintained. All of this takes considerable planning.

The FTT-AS will respond to any increase in appeal intake in the meantime by ensuring that our fee-paid judges are fully trained and employed as necessary on remote telephone hearings and paper determinations, working wholly from home unless technology limits their access. We must, however, be mindful that as other jurisdictions re-open for business, the availability of our fee-paid judges will decrease.

The Tribunal has invested in the Kinly Common Video Platform (CVP) cloud-room technology, enabling all participants to join hearings from any internet enabled device that has a camera and microphone. Salaried judges and administrative staff will be trained in its use by mid-June and their feedback used to optimise the system for use by the FTT-AS.

A telephone option will be available if a participant proves unable to access a video hearing. However, there are still likely to be limitations to the accessibility and efficacy of this resource for unrepresented, non-English speaking appellants and we will therefore run demonstrations for our stakeholder Presenting Officers, Duty Advocacy Scheme (the Asylum Support Appeals Project) and solicitor representatives during July 2020, with a view to assessing the best use for the facility.

In parallel we will contact our partner courts nationwide throughout the summer in order to establish whether they are open and can continue to offer traditional video technology (requiring appellants to attend their local court and other participants, including the judge, to be based in an Import Building court room.)

We will also explore other ways of increasing our capacity to hear appeals, whilst not requiring participants to travel long distances or creating hazardous overcrowding in Import Building. This will include adding spider-phones to each hearing room in order that some participants can effectively join hearings by telephone and additional monitors in judicial chambers to facilitate telephone or video hearings using electronic bundles.

Autumn 2020:

The timescale within which the Tribunal opens for face to face hearings will be informed by our ongoing risk assessments. When we do so, this will be at reduced capacity (perhaps 2 hearings rooms in use per day for the FTT-AS, with a maximum of 2 hearings per room) with staggered start times. Administrative staff will attend Import Building on a rota basis, also with staggered starts.

During this phase the Tribunal will therefore run a mixture of remote and face to face hearings and paper determinations. In order to distribute the administrative work, remote hearings will be conducted by judges using electronic bundles and face to face hearings will use paper versions. Some hearings will necessarily be a hybrid of face to face and remote attendance, either by design or default. The Tribunal will adopt a flexible approach as far as possible.

We do not intend to vary our recently agreed processes for exchanging evidence and submissions or to revert to our previous time limits at this stage, since these systems have worked well in enabling the Tribunal to continue to determine appeals throughout lockdown. We also recognise that a different approach to determining appeals, combined with difficulties in obtaining evidence and travelling due to residual pandemic restrictions, are likely to mean that more time is needed before an appeal is hearing-ready.

The effectiveness and accessibility of CVP hearings will be reviewed and, if appropriate, training on CVP will be extended to our fee-paid judges, who can choose to operate it either from home or at Import Building (when space permits).

The Senior President's Pilot Practice Direction expires in September 2020, if it is not reviewed at an earlier date. However, the Tribunal Procedure (Coronavirus) (Amendment) Rules 2020 - setting out the Tribunal's amended powers to determine proceedings without a hearing - remain in force until March 2022 unless varied before that time. Any changes to these provisions, such as the removal of the emphasis on paper hearings, may reduce the number of appeals that the Tribunal is able to process.

Winter 2020:

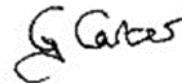
This will be a period of consolidation and reflection, following feedback from stakeholders at a User Group meeting held by telephone conference in October.

Our approach to the balance between face to face and remote hearings and paper determinations and the factors to be taken into account when determining which cases are suitable for which type of determination will be reviewed according to lessons learned over the previous months, public health guidance and any instructions issued by the Senior President.

It is anticipated that, even when (and if) the Tribunal's capacity for face to face hearings can be safely expanded, telephone and video hearings and paper determinations will continue to be offered as an alternative. The type of hearing listed will be a judicial decision, taking account of any submissions made by the parties and the availability of the various alternatives.



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Principal Judge
FTT - Asylum Support



Gill Carter
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