

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

PILOT PRACTICE DIRECTION: CONTINGENCY ARRANGEMENTS

1. This Guidance is issued pursuant to the Practice Direction made by the Senior President of Tribunals: *Pilot Practice Direction: Contingency arrangements in the First-tier Tribunal and the Upper Tribunal* on 19 March 2020 (the Practice Direction). <https://www.judiciary.uk/publications/pilot-practice-direction-contingency-arrangements-in-the-first-tier-tribunal-and-the-upper-tribunal/> It will last for so long as the Practice Direction remains in force.

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. The Practice Direction is to be in force for 6 months from 19 March 2020, although it may be reviewed within that period should it become inappropriate or unnecessary and may be revoked at any time.

THE OVERRIDING OBJECTIVE

3. Both 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.

MAKING DECISIONS WITHOUT A HEARING

6. Until rule 27 is amended to temporarily remove the requirement for consent, parties will be informed at the directions stage that the Tribunal shall proceed on the basis that each party consents to the matter being decided without a hearing, unless a specific objection is raised. The party objecting to the matter proceeding without a hearing must provide written reasons for their objection. A judge will then consider, in the light of the objections raised and all relevant circumstances, whether it would be appropriate to proceed with or without a hearing.

7. In deciding whether it is necessary to hold a hearing, the judge will have regard to paragraph 4 of the Practice Direction and rule 2 of the Procedure Rules. The fact that the outcome of the appeal is important to a party will not, on its own, constitute a reason to convene a hearing. All Asylum Support appeals are important to the individuals affected and to the Secretary of State. In particularly complex destitution or breach of condition cases, it may be necessary to hold a hearing.

REMOTE HEARINGS

8. 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. Paragraph 6 of the Practice Direction applies where a tribunal decides that a hearing is “necessary”. If necessary, a hearing will be conducted remotely.

9. A remote hearing may involve a live audio link or a live video link. A live audio link will usually be by telephone (probably *BTMeetMe*). A live video link will probably be via *Skype for Business*. Please check the Judicial Intranet for current guidance.

10. 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

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

12. Wherever practicable, the FTT -AS will record the proceedings electronically using a recording facility on the telephone system or *Skype* etc. The parties shall not make an audio and/or visual recording of the proceedings without the judge’s express permission. Failing an audio or visual recording of proceedings, the judges notes of evidence will constitute the record of proceedings.

13. 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

14. In complex appeals, it may be necessary to hear oral evidence to make findings of fact. If so, a judge will issue appropriate directions for a remote hearing only e.g. by telephone or *Skype*.

Documents

15. 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 must be indexed and paginated.

16. 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

17.. *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 the FTT -AS will make appropriate arrangements.

PRACTICAL MATTERS

18. Following discussions with the Home Office on remote methods of working and UKVI's decision making processes, please note that:

- a) The Home Office will not make any new decisions to refuse or discontinue support to asylum seekers/failed asylum seekers and their dependants for the time being. As such, the Tribunal anticipates receiving very few appeals;
- b) Any appeals received, will be dealt by the judiciary as quickly as possible;
- c) Save in exceptional cases, the FTT - AS will not hold oral hearings. The Tribunal is awaiting an amendment to the Procedure Rules that will allow the FTT – AS to decide cases without a hearing. This means that a judge will have discretion to direct a paper decision in every case unless the interest of justice require that a hearing is held;
- d) If necessary, the Tribunal will use rule 5(2)(a) to extend the time required to comply with any rule, practice, direction or to dispose of proceedings;
- e) The Home Office has confirmed that where an appellant is already in receipt of support, they will continue to receive it until the AST makes a final decision on the appeal. It acknowledges and accepts that the outcome may not be known within the normal timescales;
- f) It is unlikely in the current climate that anyone other than those who are not destitute, will be refused asylum support. The FTT – AS is therefore expecting a reduction in appeals;
- g) At some stage, however, normal service will resume and the Home Office will start to remove support from those granted accommodation to reduce the spread of COVID – 19.

FINALLY

19. 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 at this difficult time.

Sehba Storey
Principal Judge Asylum Support
31 March 2020