



TRIBUNALS  
JUDICIARY

## Chamber President's Guidance Note No.3. (SSCS)

### Contingency Arrangements and Composition of Tribunals on or after 24<sup>th</sup> March 2020 pursuant to the Pilot Practice Directions dated 19<sup>th</sup> March 2020.

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1. This Guidance is intended to supplement the Pilot Practice Directions issued by the Senior President of Tribunals to enable the tribunal to adjust their ways of working during the Covid-19 pandemic. It is intended to be a short-term measure for a period of 3 months but will be reviewed within that period if it should become inappropriate or unnecessary.

#### 2. Salaried judge is to sift appeals

They should see whether any party has requested an oral hearing. If all parties have consented to a paper determination, and you consider that the appeal can be decided without an oral hearing either:

- Decide it yourself, or
- Direct that it should be listed for paper determination before a panel of 2 or 3 members

#### 3. In all other cases the salaried judge should:

Consider whether a successful (or partly successful) outcome for the appellant is highly likely

If yes, and one or more parties have asked for an oral hearing then consider whether the appeal can be decided without an oral hearing and then either:

- Decide it yourself and issue a provisional decision to the parties, or
- Direct that it should be listed for paper determination before a panel of 2 or 3 members and make directions about the composition of the tribunal if necessary.

If it is not an 01 case and you decide the appeal alone you should include in your decision that you considered that the case could not proceed or would be subject to unacceptable delay if the standard composition arrangements were not applied

If the appeal cannot be fairly and justly allowed on the balance of probabilities on the available evidence then consider whether:

- To list for a telephone hearing before a Judge alone or a panel of 2 or 3 members

- To make directions for further evidence (obtaining GP records or any other evidence is probably not an option during this crisis)

#### 4. Triage

When a tribunal considers an appeal on the papers at triage they should:

See whether any party has requested an oral hearing. If all parties have consented to a paper determination, and you consider that the appeal can be decided without an oral hearing then decide it in the usual way

In all other cases:

Consider whether a successful (or partly successful) outcome for the appellant is highly likely

- If yes, and one or more parties have asked for an oral hearing, then consider whether the appeal can be decided without an oral hearing and if yes decide it and issue a provisional decision to the parties
- If the appeal cannot be fairly and justly allowed on the balance of probabilities on the available evidence then consider whether:
  - To list for a telephone hearing
  - To make directions for further evidence (obtaining GP records or any other evidence is probably not an option during this crisis)

#### 5. Remote hearings

Where a hearing needs to be held, the normal arrangement will be remote hearings with decisions being made online or by telephone or video. These will be using the normal panel composition where practicable.

#### 6. Standard terminology

a) On all Decisions Notices the Tribunal must record the following codes:

A: audio whether partly (someone physically in a hearing centre) or fully (all remote)

V: video whether partly (someone physically in a hearing centre) or fully (all remote)

P: paper determination which is not provisional

T: triage provisional decision ie after early neutral evaluation on the papers

b) All Decision Notices must include a description of the hearing in the format below:

This has been a remote / paper hearing on the papers which has been consented to / not objected to by the parties. The form of remote hearing was [insert the code and description from the list above]. A face to face hearing was not held because [insert eg it was not practicable and no-one requested the same or it was not practicable and all issues could be determined in a remote hearing / on paper]. The tribunal considered a bundle of [x] pages, [together with the oral evidence of...]. (The parties said this about the process: [add]). The tribunal's decision is...

  
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**Acting Chamber President**  
**30<sup>th</sup> March 2020**

## Annex A: Suggested paragraphs

1. Having considered the papers in this appeal, and having regard to:  
paragraph 6 of the Pilot Practice Direction: Panel Composition in the First-tier Tribunal and the Upper Tribunal; and  
the overriding objective  
in order to enable the case to proceed and to avoid unacceptable delay during the Covid-19 pandemic I direct that this case may be heard by a judge alone [or by a panel consisting of ...]
2. Having considered the papers in this appeal, and having regard to:  
paragraph 6 of the Pilot Practice Direction: Panel Composition in the First-tier Tribunal and the Upper Tribunal; and  
the overriding objective  
in order to enable the case to proceed and to avoid unacceptable delay during the Covid-19 pandemic I direct that this case is to be listed for **paper determination** by a judge alone [or by a panel consisting of ...]
3. Having considered the papers in this appeal, and having regard to:  
paragraph 6 of the Pilot Practice Direction: Panel Composition in the First-tier Tribunal and the Upper Tribunal; and  
the overriding objective  
in order to enable the case to proceed and to avoid unacceptable delay during the Covid-19 pandemic I direct that this case is to be listed for **telephone hearing** by a judge alone [or by a panel consisting of ...]  
[you will also need other telephone hearing directions]
4. The tribunal has considered the documentary evidence in this appeal. The tribunal's provisional decision on that evidence is that this appeal should be allowed in the following terms...

If within 28 days of issue of this Notice both parties consent to this decision being made then a final decision in the same terms may be issued by the tribunal as a Consent Order.

If either party does not agree with the appeal being decided in this way then you must notify the tribunal within 28 days of issue of this Notice. If either party objects to the provisional decision then the tribunal will arrange a hearing of the appeal which may be by telephone [or video]. Any further evidence that you want the tribunal to take into account should be sent within 21 days.

If neither party objects to the tribunal making a paper determination within 28 days of issue of this Notice then the tribunal will issue a final decision.

5. On [date] the tribunal issued a provisional decision in this appeal. Both parties have consented to a decision being made as proposed. The decision is therefore made by Consent Order.
6. On [date] the tribunal issued a provisional decision in this appeal. However, the tribunal considers that it made an error in relation to the provisional decision [or that the circumstances have materially changed since the provisional decision was made] and accordingly the tribunal now issues a revised provisional decision [or lists this appeal for hearing...].

## **Annex B: General advice**

1. If you are minded to refuse an appeal on the documentary evidence then it is unlikely that the appellant will be content with your decision, and so it is probably better to direct a telephone hearing. Otherwise you will simply be generating lots of post-hearing work which is not desirable.
2. Not all cases can be decided by a judge alone. We sit with experts for a reason. You can only decide an appeal as a single judge if you can decide it fairly and justly having regard to the overriding objective. If, by taking advice from one or more non-legal members, you could decide a case fairly and justly as a judge alone, you are able to seek their advice provided the advice is recorded and disclosed to the parties. The decision would still be yours alone, but you would have the benefit of an expert's perspective.
3. If you are deciding an appeal without an oral hearing then you need to give better reasons to explain your decision. This may be a few short paragraphs. You must explain e.g. why you have awarded more points than DWP, or why you have not awarded the points that the appellant has asked for. If you are deciding an ESA/UC WCA appeal and not putting the appellant in the support group you must explain why (unless it is clearly not in issue).
4. Careful analysis of the written evidence is essential. What is not in dispute? What inferences can you draw? What are the live issues? Would asking the appellant a few questions on the telephone make a difference? And remember to apply the balance of probabilities.
5. If a provisional decision is rejected then the appeal should be referred back to a salaried judge for directions for hearing.