



JUDICIAL
COLLEGE

TRIBUNALS EDITION 1 — 2021 SPECIAL EDITION TRIBUNALS

Editorial Edition 1– 2021

EDITORIAL

By **Phil Rostant**



Welcome to this special edition of the Tribunals Journal. This is my first as Editor but I will introduce myself properly in my next editorial, which will be in the first standard edition of the Journal to be published since I became Director of Training for Tribunals in July 2020. For now, however, I don't want to distract from what follows.

This edition is published to mark the first anniversary of national lockdown at the end of March 2020. It is, as far as I know, the first special edition of the Tribunals Journal since a special 'International' edition in 2014. It consists entirely of one long article. Although the article has been contributed to by a large number of Judicial Office Holders (JOHs), it has been brought together by three members of the Editorial Board: Belinda Cheney, Rebecca Howard, and Julius Komorowski and I'm particularly grateful to them.

I imagine that for all of the present readership of the Tribunals Journal, no other single national event has had such significant consequences for daily life and work as the Coronavirus pandemic. As I write this, the roll out of the national vaccination programme continues apace and the government's "roadmap" for recovery offers hope for a return to something like pre-pandemic normality. This edition of the Journal makes it clear, however, that the effects on our work of the pandemic will be permanent.

In deciding on this edition, the Editorial Board thought it important that there be a record of how first-tier tribunals responded to the demands placed on them by the pandemic and the lockdown it brought. This edition records the responses of the Employment Tribunals in England, Wales and Scotland, the Immigration and Asylum Chamber, First-tier Tribunal Health Education and Social Care Chamber which includes the Mental Health and Special Educational Needs and Disability jurisdictions, the Property Chamber, the Social Security and Child Support jurisdiction of the Social Entitlement Chamber, the Special Educational Needs and Disability Chamber, the Tax Chamber and the War Pensions and Armed Forces Compensation Chamber.

Unsurprisingly, the responses have a number of common themes. They all record a story of dedication, hard work, and willingness to try new and unfamiliar forms of work on the part of JOHs and administrative staff. That is a story that deserves to be celebrated. Not one tribunal thought for one second that the appropriate response to lockdown was simply to shut up shop and hope for better times. The vital nature of the work of the tribunals, such a key if often unsung part of the justice system and of ensuring the rule of law, meant that continuing work, however that was possible, became the immediate and pressing priority.

How exactly each tribunal went about the business of delivering justice over the year that followed is recorded in these pages. In almost every case, reference is made to the "steep learning curve" for judges and staff. Technology became the key tool, ranging from the humble telephone hearing for 30 minutes, to full-blown

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'...no other single national event has had such significant consequences for daily life and work as the Coronavirus pandemic.'

video hearings with three member tribunals, multiple parties and witnesses and electronic bundles. Reactions to the use of technology have, however, varied. In some cases, SEND being perhaps the starkest example, video hearings have become the default method and will remain so. They have proved extremely popular with users and have encouraged engagement and participation. In most other cases the picture is more mixed although for everyone remote hearings will remain as part of a more flexible range of options for the listing of cases. For some Chambers, digitisation has gone beyond just hearings. Both the Property and Tax Chambers have to a greater or lesser extent moved from paper to electronic files and communication, and in the Employment Tribunals digital bundles are common.

Nobody foresees a full return to pre-pandemic ways of working. This is one sense in which we have been changed forever. I hope, however, that it is not overstating the case to say that the stories below demonstrate a confidence and pride in the way in which JOHs and our Administrative colleagues have risen to the challenge of COVID that will also have permanent if less tangible effects.

I hope you find what follows interesting and inspiring.

Phil Rostant is Chair of the Editorial Board

Delivering justice during Covid

TAKING STOCK OF A YEAR OF CHANGE

By **Belinda Cheney, Rebecca Howard, Julius Komorowski**

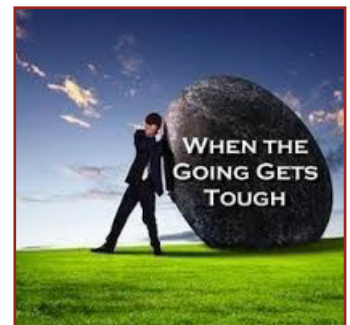


Introduction - Belinda Cheney

A novel strain of coronavirus, from the same family as the common cold but appearing more like pneumonia, was first detected in December 2019 in Wuhan in China. On 11 January 2020, the Chinese published their genetic sequence of the virus and the race to make a vaccine began. Two patients tested positive for coronavirus in the UK on 29 January 2020. On 30 January 2020, the World Health Organisation (WHO) declared a global health emergency. On 11 February 2020, the virus was named COVID-19 and cases began appearing outside China. COVID-19 spread more rapidly than anyone had imagined and suddenly Italy was overwhelmed. 50,000 Italians were placed into lockdown on 23 February 2020. By 4 March 2020, the UK had 87 cases, by 11 March 373, by 16 March 1543 confirmed cases but 10,000 suspected infections. On 17 March, France went into lockdown and the UK was closing down. People were told to socially distance and schools, pubs, restaurants, gyms and social venues were closed.

On 23 March, the full lockdown began, and we were told to work from home. Until then, Tribunal Judges, Members and staff were going to work every day as usual and the work of our Tribunals never stopped throughout the following months. We simply swapped our commute for home working, from conducting hearings face to face to working remotely, initially by phone and then by video. When this began in March 20, we had no clear idea of the extent and duration of the restrictions which would follow and this remains a monumental challenge for so many workplaces.

The old saying that “When the going gets tough the tough get going” has never been truer and nowhere better exemplified than in the Tribunal Service. Leadership Judges and the Administration worked day and night to find new ways to keep the wheels of justice turning. They achieved this remarkably quickly and rolled out remote ways of working to all judicial office holders (JOHs) who have, in turn, embraced the changes and have made them work. The Tribunal Service has demonstrated flexibility, responsiveness to new challenges and effective collaboration with the judiciary.



We wanted to give Tribunals Journal readers an idea of how a broad range of tribunals have responded to the huge challenges posed by the pandemic. We asked each tribunal for insight into how it has managed throughout.

The questions we posed:

1. When did it become apparent that you were going to have to find a new way of working?
2. How did your tribunal respond?
3. How long did it take to make the transition? What were the stages?
4. How was this for members? For your admin? For your stakeholders? Have you had any feedback?
5. What have been some of the challenges? Have these been overcome?
6. What have some of the successes been? Have you managed to avoid a backlog?
7. What do you think the future will look like?

What follows are the answers we were given...**Employment Tribunals, England, Wales & Scotland**

With thanks to Judge Rebecca Howard and input from Judges Barry Clarke, Shona Simon (Presidents England & Wales and Scotland) and Sian Davies (Acting Regional Employment Judge Wales).

The Employment Tribunals (ET) - England, Wales and Scotland - have embraced remote hearings, rapidly training some 1,500 office holders on the chosen platform; CVP. We routinely hold multi-day hearings before full panels, sitting remotely, as well as preliminary hearings and judicial mediations. The Employment Tribunals, north and south of the border, are sitting more "CVP hours" (about 1,800 per week) than any chamber of the First-tier Tribunal, across about 330 CVP rooms. This is how we got there...

At the end of March 2020, the (then) President of ET (E&W); Brian Doyle and the President of ET Scotland; Shona Simon directed a moratorium on face to face hearings during the first national lockdown. The vast majority of cases listed for final hearing were converted to a remote preliminary hearing for case management. This approach was soon extended to 26 June 2020.

With the prospect of the loss of at least three months of in person hearings, identifying alternative methods of progressing cases became an urgent priority. Shona Simon and newly appointed President (E&W) Barry Clarke, jointly issued a 'road map' on 1 June 2020, laying out their plans for case management and hearings during 2020 and providing answers to a series of 'frequently asked questions'.

We already held many of our Preliminary Hearings by telephone across England and Wales, but now the judges were participating from their own homes and this presented its own set of additional challenges around connectivity, documentation and so on.

In the initial weeks of the moratorium a national (England, Wales & Scotland) ET Video Hearings Group was established consisting of the President, four REJs and VP Scotland to explore options for holding video hearings on a variety of platforms. Cloud Video Platform (CVP) was chosen and piloted in Wales, Glasgow and East Midlands ET and rolled out nationally shortly thereafter.

The national video hearings group worked quickly to establish common practices across the English regions, Wales and Scotland; meeting at least weekly in the early part of lockdown, agreeing strategy, new processes and documentation to support video hearings. Administrative colleagues worked with our judges to improve connectivity and technical know-how.

Alongside this, a 'CVP Team' of Employment Judges was set up to avoid duplication of effort across regions by sharing tips and know how; the group communicated and met through Microsoft Teams and were invaluable in teaching and guiding colleagues how to use the new technology; through a range of methods; for example, producing a 'wiki' living document on how to deal with video hearings and use CVP, help forums and so on. The interim guidance on remote hearings issued under the Equal Treatment Bench Book was circulated and adopted as good practice.

Employment Judges had to get to grips with CVP quickly; mock hearings were held in regions for judges to practice with the new technology and adapt their skills for video hearings. Initially only private Preliminary Hearings were held on CVP progressing to short public hearings (wages claims) and although different parts of Great Britain

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proceeded at different speeds, depending on the availability of staff, hardware and venues, final hearings (including multi-day cases) had returned in volume by July 2020.

It was important to ensure that Employment Tribunal users understood and felt comfortable with CVP and so User Group Meetings were held across the country to discuss and demonstrate the technology. Each region provides ongoing support to users to reduce the risk of last minute technical hitches derailing a hearing on the day of the hearing. For example, through regular 'CVP test' clinics where a CVP room is made available to any participant in an ET hearing to test their ability to connect.

Many categories of cases in the Employment Tribunal are heard by a panel consisting of an Employment Judge sitting with two non-legal members (NLMs). Our NLMs were provided with CVP training over the summer and members have been sitting on cases with our judges since August. Whilst we now have some capacity to hear cases in person, many physical hearing rooms are not large enough to accommodate a panel of three with social distancing and so hearing those cases may require the participation of one or both non-legal members via CVP.

The adoption of CVP has been a huge learning curve for everyone. We were particularly fortunate to have the perseverance, fortitude and commitment of our administrative colleagues who grasped the technology enthusiastically; overcoming numerous hurdles with such tenacity and without whom delivery of remote hearings would not be possible; we cannot thank them enough!

There are still plenty of challenges in conducting CVP hearings; users who do not have equipment, reliable internet or a suitable quiet space from which to attend a hearing; ensuring parties and the Tribunal have access to the same documentation, maintaining effective communication between parties, witnesses and panel members to name a few. Keeping some formality and minimising disruption from children, dogs and doorbells can be a tad testing at times!

But we can proudly say that some eight months since that initial moratorium (at the time of writing) we are holding hundreds of CVP hearings weekly, from short preliminary hearings to complex multi-day hearings with full panels and our "disposal rate" has returned to pre-Covid levels.

In September Presidential Directions and Practical Guidance was issued in E&W and Scotland addressing the different formats and forums which might be appropriate for a hearing and identifying the factors for consideration. The Practice Directions may be read by selecting the following links:

- [Presidential Practice Direction on remote hearings and open justice](#)
- [Practice Direction – Fixing and Conduct of Remote Hearings](#)
- [Practical Guidance on Remote Hearings in the Employment Tribunals \(Scotland\)](#)

It is still early days, but initial feedback on the experience of CVP hearings from the professional user community has been positive and they are pleased that hearings have resumed in volume. Some litigants and parties actively prefer CVP hearings, for example where witnesses are coming from a distance or where attending a hearing from a familiar place can reduce anxiety for a participant with mental health challenges.

Of course, for some litigants and users, for a range of different reasons, CVP is not accessible to them and can impede their effective participation. For these Tribunal users, in-person participation is necessary and we have been holding face to face hearings in our Tribunal buildings since September.

Our administrative colleagues have made huge efforts to ensure that our Tribunal buildings are accessible and COVID compliant. However, ensuring safe social distancing throughout our buildings and hearing rooms inevitably means that only a small proportion of those rooms can be used for hearings at any one time. We are constantly adapting to meet needs and progress hearings; for example, subject to capacity and availability of audio visual equipment, we can conduct hybrid hearings (part remote, part in person) where one party needs to attend in person whilst another prefers to participate remotely.

In some regions, we have found ourselves sitting in 'Nightingale courts' to accommodate in-person hearings. A colleague described sitting at the Lowry Theatre in Manchester. His previous 'Lowry' highlights had been; *Horrible Histories*, *An Inspector Calls*, *The Tweenies* and *David Baddiel* (in no particular order), when he found himself sitting there as a judge. He described the benefits for a 'Covid compliant' hearing: a lot of space to ensure attendees and panel were appropriately distanced, high-quality sound and video, wide accessible corridors and public spaces, spacious toilets and a remarkably effective crest on a stand.

'...our administrative colleagues [...] grasped the technology enthusiastically; overcoming numerous hurdles with such tenacity [...] we cannot thank them enough!'

In addition to all this, we have continued to hold Judicial Mediation hearings; converted successfully to CVP or telephone hearings; our success rates remain high, a significant and positive contribution to the delivery of justice in the Employment Tribunal.

It is a testament to the commitment and ingenuity of our JOHs and our administrative teams working together across England, Scotland and Wales, to maintain our service and continue to deliver hearings to our users.

We are experiencing a marked increase in our caseload, reflective of the tough times that our country is facing. The early adoption of CVP and the willingness of judges to use it has been key to addressing the challenges.

The two Presidents of Employment Tribunals, Judge Barry Clarke in England and Wales and Judge Shona Simon in Scotland, are justifiably proud of what their colleagues have achieved, by maintaining the delivery of workplace justice for workers and employers alike during a time of unprecedented disruption.

Immigration and Asylum Chamber, First-tier Tribunal

With thanks to Judge Russell Campbell.

Upon the announcement of lockdown at the end of March 2020, hearings in appeals for April and May, and then June, were adjourned. The impact of judiciary and administrative staff self-isolating was notable. Taylor House, the largest hearing centre based in London, had to close down briefly and re-opened in mid-April with a skeleton staff.

Bail was recognised as a priority. All papers were dealt with electronically, being sent by e-mail. For the first time, BT MeetMe, the telephone conferencing service, was used to hear applications. A total of 1427 applications for bail were dealt with between 1 April and 31 August. 91% of cases were disposed of within six days during this period.

Instead of substantive appeal hearings, a programme of case management review hearings ('CMRs') was implemented, conducted initially by BT MeetMe, and later by remote video-link. Between April and August of this year, 5371 CMRHs took place. Tailored directions were issued to facilitate the substantive hearing of appeals, when circumstances permitted. This comparatively intensive approach was followed by a significant rate of withdrawals of decisions by the respondent, obviating the need for a substantive hearing. Now that there has been some time for adjustment, the tribunal is moving back to a model where cases are reviewed on paper ('pre-hearing review'), usually without a CMRH.

The hearing of substantive appeals began again in limited numbers, from mid-July, though only by video-link. A variety of technologies were used. Where submissions only were required, BT MeetMe could be used. Skype for Business was used for hearings where oral evidence was given for a short time, until a new Cloud Video Platform ('CVP') was developed and ready to be deployed. There has also been a resumption of some face-to-face hearings. Where the appellant has the support of a social worker, or an intermediary, then this is the usual manner of proceeding. Often a hybrid system will be used, so that at least the judge and a representative will be present in the hearing room, with one or more of the appellant, witnesses or the respondent's presenting officer joining by remote video link. And where a hearing was intended to proceed entirely remotely, but the appellant's connection breaks down, facilities can sometimes be provided at a hearing centre, avoiding adjournment of the hearing to another day.

Before lockdown, the FTT(IAC) had limited experience of hearing cases remotely. This period has provided for a steep learning curve as new audio video technology was introduced and working practices and procedures were reformed over a short period of time. Judges were provided with training in the new technology, detailed written guidance in its use, and sat initially as panels so that experience could be shared.

The pandemic has also precipitated or accelerated work which should bring longer term benefits. A new electronic casework system, with all electronic documents filed online, with directions and all other notices issued electronically also, began accepting the majority of appeals from appellants in country, and a practice statement followed in June requiring its use where possible. Work is underway also on a bench book, which is at an advanced state, for the benefit particularly of fee-paid judges who may have had a significant break in their sittings, but which should prove of advantage to all of our JOHs.

Cases heard by remote video link tend to take longer, because of technical difficulties and other reasons, and judges can find the medium is more tiring than hearing cases face-to-face. However, in future, remote and hybrid hearings will provide greater flexibility. Importantly, it can offer appellants (in appropriate cases) an opportunity to have cases heard whilst avoiding any inconvenience and cost associated with travel. We have witnessed

'The pandemic has also precipitated or accelerated work which should bring longer term benefits.'

appellants participating in entry clearance appeals (where the appellant appeals from abroad against the denial of a visa) on a scale that had not before been experienced. The term 'in appropriate cases' of course remains a critically important factor and judicial decisions on suitability will continue to be made on mode of hearing in individual appeals.

Mental Health Tribunal

With thanks to Denise Leeson who heads the administration in Leicester and with input from Judge Sarah Johnston, Deputy Chamber President and Judge Mark Sutherland Williams, Chamber President.

By early March we were aware that the Covid pandemic was going to have an effect on the Mental Health Tribunal and members travelling to hospitals and attending tribunals in person. The administration began receiving contact from hospital trusts and members raising concerns about their safety. Some trusts started refusing entry to tribunal members. Nonetheless, the reality was that people with mental illness were still being detained, often in testing circumstances with the requirement to isolate in their rooms pending Covid test results, and we had to deliver justice to them.

The administration in Leicester formed a taskforce that began working as soon as lockdown was announced. This group converted all hearings from face to face to telephone hearings, working with the stakeholders and the judiciary. At the same time the senior judiciary began working to ensure that we could continue to deliver tribunal hearings. Judge Johnston, the Deputy Chamber President, and HHJ Sycamore, the then President, worked with the Senior President on the practice direction to enable hearings to continue to take place. The draft was shared with the administration so they could ensure that processes were in place. Furthermore, the administration and the judiciary worked together to ensure that a move to telephone hearings was as smooth as possible in the circumstances, given the staffing and health challenges we were facing.

The number of staff at Leicester fell significantly initially and this presented practical challenges for listing and administering hearings, but once laptops were received and staff could work from home, this improved. Given the staffing issues and lockdown issues for patients in the community, Judge Johnston and Denise Leeson worked together to prioritise hearings, initially focusing on section 2 cases, recalls from conditional discharges, and CAMHS cases. We temporarily postponed all community cases, as we did not have the resources to hold CTO hearings at that time and the decision was taken to prioritise patients detained in hospital. Hearings were initially held with a Judge sitting alone. Very shortly thereafter, over 500 hearings were listed each week, and things were back on track, postponing only CTO cases in line with judicial directions where possible.

We then moved to listing hearings before a single judge on CVP. Judge Westcott was the lead judge for video hearings during this time. Judge Westcott and Judge Johnston trained some 300 Judges to use the CVP. Judge Johnston worked with representatives and directed that the hospitals send the clinical notes directly to the representatives given they could not attend hospitals. From 1 June 2020 we returned to listing new cases with a full panel. The salaried judiciary trained over 600 JOHs to use CVP and written guidance was regularly updated and sent to JOHs about how to use CVP. There were initial problems with connectivity as the system developed, but the judiciary and the administration were meeting regularly with administrators for Kinly who provided the video platform to iron out these issues. Judge Rickman and Judge Misir took over from Judge Westcott as video leads thereafter. They held a spreadsheet and engaged with stakeholders to ensure connection problems were overcome. Christian Carter-Dawson was instrumental along with Denise Leeson, Rachel Dunn, Sue Burton and all the staff at the administration in ensuring that the system began to improve.

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Soon community cases were also listed. The tribunal initially did not have a free phone number for patients, but this was also addressed and now community patients are joined to the hearing by telephone for free or they go to a community base where it is possible to participate in hearings by video. With all JOHs sitting, it became obvious that support was required and a team of clerks was established. The administration managed this in a few days and initially staff were used to clerk hearings before clerks could be recruited. Clerks were taken from various jurisdictions until the current cohort were recruited. Once clerks were recruited, they needed training and induction, which then took place.

So much was unknown and every day the administration had to make changes and adapt. In the early days it was a bit chaotic, but as a tribunal we tried our best to provide guidance and support to our stakeholders and we continued to deliver the best service we could in the circumstances. Everyone was very supportive, as we were all in it together. Going through the pandemic has brought us even closer together. There were changes to how we

hear cases, legal challenges to work through, training to give and appraisals to get up and running. Once the initial systems were worked out, we began discussing the changes and looking forward to a new future and ways we could work. This work is ongoing and largely dependent on what happens with the pandemic.

With over 33000 applications and references per annum, over 1000 JOHs, over 1100 different venues, countless representatives and the MOJ to deal with, communication and accommodating all the different perspectives, challenges still arise, but they have been met and overcome. The administration staff worked incredibly hard and all had their own pressures, family commitments and a degree of fear like everyone else to deal with. The key thing was a “can do” attitude. Almost routinely, two hearings are listed each day and the number of completed cases has increased since we have been working remotely. Stakeholder feedback is split. Some patients, professionals and representatives prefer face to face hearings and hope that these resume soon; others see the benefit in remote hearings. It is difficult to tell what the future will look like, but we have demonstrated that we can hold hearings by video and we are able to adapt well. We will likely continue with a mixture of CVP and face to face hearings depending on individual circumstances.

‘So much was unknown and every day the administration had to make changes and adapt.’

Our successes include the immediate change to telephone hearings. We then moved to CVP. Our prioritisation of hearings led to a backlog for a short while, but we managed to clear that backlog with sustained and focused effort very quickly. We are able to list hearings more efficiently as we have no geographical constraints. We have worked to ensure a fair distribution of the work to JOHs. Our clerks are now experienced and we work with SEND/PHL/CS, our sister jurisdictions, in delivering the clerking to hearings. The administration and judiciary have worked closely and adapted our processes along the way.

There have been so many exceptional achievements throughout Covid that it is impossible to pick a specific one, but we did reach the finals of openness category in the NBC awards for the clerking team and Denise Leeson was honoured to receive a nomination from the judiciary for ‘keeping justice going’ and a further nomination was sent in for the team for their work during this period.

Property Chamber, First-tier Tribunal

With thanks to Judge Siobhan McGrath, Chamber President.

As a Chamber our vision and purpose is to provide accessible, proportionate and timely dispute resolution in a complex and important area of the law. Covid-19 tested our ability to continue to fulfil this vision. However, administrative staff and judiciary working as a team, transformed the way we facilitate access to justice and the vision continues to be fulfilled.

In February 2020 we realised that it was likely that radical action was required to tackle Coronavirus and we started to make plans to ensure the safety of users, staff and judiciary by postponing cases listed until the end of May 2020. When lockdown came, our two largest Tribunal offices in London and Havant closed and did not open until July. This left us with no access to post or telephones other than in the three smaller offices around the country.

The solution was to convert paper files to electronic files and to direct users to communicate by email. For our Residential Property division an augmented solution was applied so that administrative staff and salaried judiciary were given access from home to our custom designed Case Management System. All of this sounds easy. It was not. The transfer of paper files to electronic files required intensive work. Securing home access to the CMS and files meant ensuring staff had laptops and working with IT providers to effect the changed ways of working.

Initially we concentrated on paper-only and telephone case management and paper determinations but by April we started to acquire CVP licences to carry out video hearings. During the first three or four months following lockdown, the work we could offer to fee-paid judiciary was very limited. But after that we started to involve them more closely. During the early autumn we delivered CVP training to all of the fee-paid judges and members.

In four of our offices we now either have no backlog or a limited backlog. In London we are catching up quickly. The intake of cases fell during the first six months after March but is now approaching usual levels. Feedback from users has been positive and there has been impressive participation in remote hearings and the provision of electronic bundles.

We are operating in a new way and the pandemic is still with us. Staff and judiciary continue to work successfully from home as well as from the office. Post is minimal and all of our files are electronic. The vast majority of cases are listed for remote hearings.

We will not go back to the old ways. Instead we will work to enhance the new ways of working. We have not yet undergone HMCTS reform but when we do, we will ask for on-line applications to be facilitated and our workstreams to be incorporated into a new system. We will consider whether to routinely offer remote or hybrid hearings as an alternative to face to face hearings in appropriate cases.

We are optimistic for the future. We are proud of what we have done and recognise that none of this could have been achieved without the mutual support, ingenuity and good-will of staff and judiciary working together.

‘Feedback from users has been positive and there has been impressive participation...’

Social Entitlement Chamber First-tier Tribunal – Social Security and Child Support Jurisdiction

With thanks to Judges Graham Cooper and Mary Clarke, Acting Chamber President.

When face to face Social Security and Child Support (SSCS) hearings were suspended in March 2020 we realised straightaway that in order to continue to deliver justice we were going to have to urgently find new ways of working.

Over the course of the following weekend we came up with a documented plan for using BT MeetMe and Skype to deliver hearings, adapting BT MeetMe to allow us to call parties, joining them to hearings at no cost to them. An ambitious plan was hatched to resume a full pattern of hearings a week later, with panels working from home and being clerked remotely by clerks working on the GAPs system, preparing and sharing Decision Notices in real time using the screen-sharing function on Skype.

Armed with an updated set of procedures and guidance to panel members, we set about briefing panel members on how to deliver hearings and set about a root and branch restructuring of our administrative processes.

The first step was for our Regional Processing Centres (‘RPC’) to contact all appellants for whom hearings were scheduled during the following weeks, making sure we had accurate contact details and getting them ready to have their appeals heard by telephone. Appellants were told when their hearings would take place and that they should expect received a telephone call from the clerk who would connect them to the tribunal. Guidance was shared with tribunal members on how to manage the new system and shortly before each hearing an information sheet with step-by-step instructions and contact details was provided.

The transition to telephone hearings was successfully undertaken in a week. However, it soon became apparent that although this system would allow us to clear substantial numbers of appeals, we had to change listing patterns and case management arrangements to ensure that only cases that were ready to be heard were listed. We set about sifting all appeals that were ready to list, looking at whether cases could be decided on the papers and whether telephone hearings were appropriate.

Through sifting it also became apparent that potentially there were a large number of cases which might be heard more effectively by video, thereby reducing the need for face to face hearings. Cloud Video Platform (CVP) hearings have provided us with a solution that has proved particularly successful for Child Support appeals. In partnership with stakeholders, we have developed the use of the CVP system as a flexible platform through which we are able to undertake hybrid video and telephone hearings, whilst offering the added bonuses of the screen-sharing and recording to which we have become accustomed during the pandemic. We have integrated BT MeetMe with CVP and are transitioning away from BT MeetMe telephone hearings, some of which were managed entirely by the judge, to the full use of the CVP platform with the benefit of more traditional clerking support. This transition has presented huge challenges in terms of IT and the devising and adapting of existing procedures. The biggest challenge has been in training staff and all of our salaried JOHs to be able to manage these innovative ways of working at a time when we are also introducing digital files and the various elements of reform. At the same time, all 2049 SSCS JOHs are being trained in the use of CVP for video hearings. Throughout this whole process we have worked constantly in close partnership with our innovative and imaginative administrative colleagues who have worked tirelessly and enthusiastically to deliver momentous change at a very challenging time.

‘...we set about briefing panel members on how to deliver hearings and set about a root and branch restructuring of our administrative processes.’...’

The result of relentless hard work by JOHs and administrative staff alike has been that the Tribunal has continued to operate at almost full capacity throughout the pandemic to make huge inroads into our caseload. At the start of the pandemic we were faced with a significant backlog of cases, many of which were more than a year old. By continuing to employ all the resources available to us we have succeeded in

significantly reducing that backlog and have significantly reduced the waiting time for our users. More importantly, appellant's have continued to have their appeals heard and decided. Many vulnerable appellants have been provided with access to justice which otherwise may have been delayed for many months.

It is difficult to predict what the future may hold. We have now become accustomed to working in ways which we may have thought were neither feasible or desirable under the old ways of working. It is fair to say that whilst face-to-face hearings will always remain a fundamental part of our work and are continuing in appropriate circumstances, we have seen that we are also able to deliver justice by way of remote telephone or video hearings, and not just in times of crisis. New ways of working have proven popular and successful with tribunals and with parties to an appeal. The challenge over the months and years ahead will be to not lose momentum, but to embrace change and work in partnership to deliver this to the benefit of those who matter most, the parties who appear before us.

Special Educational Needs and Disability Chamber, First-tier Tribunal

With thanks to Judge Meleri Tudur, Deputy Chamber President for this report.

By the beginning of March 2020, the F-tT SEND jurisdiction was already receiving requests for arrangements to be made for parties, representatives and witnesses to join hearings remotely because of participants self-isolating, shielding or unwell. The jurisdiction has been using BT MeetMe for telephone case management hearings since 2009 and also enabled witnesses to join a hearing by telephone in exceptional circumstances, so already had experience of working flexibly. The jurisdiction had also been piloting video-enabled hearings, so was in a position to deal positively with those requests.

Fortunately, the three jurisdictions in this half of the HESC Chamber – First-tier Tribunals Special Educational Needs and Disability, Care Standards and Primary Health Lists already had both the software and hardware to arrange video enabled hearings, which meant that some of the participants were physically in the hearing room and others were joining remotely by video or phone. These are now known as “hybrid” hearings. Whilst this had been done very occasionally over the previous 12 months in order to deal with logistical problems across national and England/Wales jurisdictions, this was the first time that it had been done because of health issues. On the 16 March 2020, a meeting of the Tribunals judiciary and administration decided that with the imposition of a lockdown imminent, it would be necessary to test fully video hearings for all listed hearings if the resources could be secured, with a fall-back position of telephone hearings using BT MeetMe and the offer of paper hearings proposed as other options.

From the small beginnings of four CVP rooms on the 16 March 2020, by the 19 March access had been secured to 20 rooms and although it was not clear at that point whether it would be successful, the resources were in place and the SPT and CP announced the move to fully video hearings and digital working. The first fully remote hearing of a disability discrimination claim by CVP took place on the 19 March 2020.

At that point, paper bundles for the hearings for the w/c 23 and 30 March had already been dispatched, so that all JOHs had access to paper bundles for the initial remote hearings. All the hearings listed were moved to fully video and salaried judges were tasked with providing support to both parties and panels to access the hearings for a period of three weeks, whilst the staff was trained to use the software and JOHs were given familiarisation sessions and training in its use. A surgery arrangement was available in a CVP room from 7.30am daily from the 23 March 2020, to allow an opportunity for JOHs to obtain instant and face to face advice at the start of the hearing day to address any concerns or issues arising.

The jurisdictions relied on the good will of their JOHs to access training sessions on remote and digital working during the lockdown, to show them how to access digital bundles and make best use of their devices. The training was devised and delivered by the salaried judiciary and senior administrative managers.

There is no doubt that the JOHs found the prospect of fully digital working challenging and the use of technology and video hearings tiring. They are, however, dedicated and committed to ensuring the service is delivered, and pushed their own boundaries to ensure that hearings were delivered wherever possible using either video hearings, paper hearings or hybrid telephone and video hearings where possible.

The administrative staff in Darlington were fully relocated to working remotely from home by the beginning of April and many of them trained as video hearing clerks to support panels and parties into hearings. They, too, are very dedicated and have provided a first class service working fully remotely.

‘The SEND and CS stakeholders have been overwhelmingly positive about the response and the move to digital working.’

The SEND and CS stakeholders have been overwhelmingly positive about the response and the move to digital working. When CVP hearings were first introduced, all users were asked to complete a response questionnaire to enable HMCTS to identify issues arising from the use of the technology. The vast majority of those responses were positive ones. Since then, the technology has been used to conduct user group meetings and, on every occasion, the users have expressed a very positive response to the video and digital ways of working, going as far as seeking reassurances from the Tribunals that the offer of a video hearing will remain on the cards for the future.

Considering the nature of the jurisdiction, there are many advantages to being able to work remotely. In SEND, which deals with appeals involving the families of children and young people with special educational needs and disability, many of whom will be vulnerable with underlying medical conditions, the advantage of participating from the safety of their homes is obvious. Parties have reported that they find the hearing much less daunting by video hearing from the comfort of their own homes where, normally, they would be expected to arrange child care then travel up to two hours to a hearing centre, find and navigate the building and face a panel of three strangers in an unfamiliar environment.

In Care Standards and Primary Health Lists which involve appeals arising from the care and NHS sectors, the ability to participate remotely are again obvious, because for witnesses the disruption to their day is far less and for parties, they are not required to travel to hearing centres for the hearing.

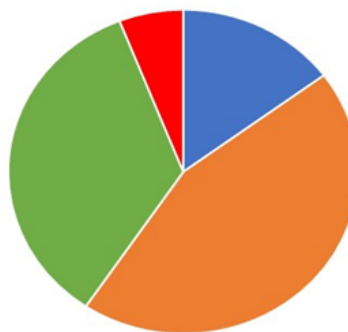
The Tribunals conducted a survey of the views of JOHs during the summer of 2020 and the headline responses were:

- a. Approximately 30% who responded had to do nothing to adapt to working remotely; 60% had to borrow or buy new equipment or resources and the remaining 10% moved furniture or work locations in the home or changed their daily routines.
- b. 70% expressed a preference for working from home if hearings were to be conducted routinely by video; 20% would prefer to work from a hearing centre with the whole panel present; 8% from a hearing centre as a hybrid hearing and 2% from a small room with appropriate equipment and Wi-Fi in a hearing centre.
- c. Bearing in mind that all tribunal bundles were issued on paper until March 2020, the following chart demonstrates how effective the move to digital and remote working has been:

The main challenges have been to enable JOHs to develop new skills, ensure sufficient and adequate video hearing support and also to enable those parties and witnesses who do not have access to sufficiently stable broadband or technology to access the hearings. HMCTS provided a dedicated video hearing support team from about May, based at Stoke, and set up a brand new, fully trained and dedicated Video Hearing Support Team from September. The additional support has assisted greatly, enabling JOHs to continue to step up to the challenges and parties have really appreciated the fact that hearings were not delayed.

20. Would you prefer your Tribunal Bundle to be provided electronically, in a paper copy or both?

- More details
- All bundles on paper
- All bundles digitally/electronically
- Depends on size of bundle
- Depends on type of case



The biggest success has been that F-tT SEND has not had to postpone a single case for want of a panel since the 17 March 2020. To put that achievement into context, the Tribunal postponed over 1000 cases in the preceding 12 months for want of panels or hearing venues. Not only has the Tribunal avoided a backlog, but it has heard all of

the cases which had previously been postponed and has managed to hear more cases in a single day than it ever achieved in its history. In the year to date since April 2020, the Tribunal has managed to issue 92% of decisions within ten working days. That is quite an achievement – what a team!

The future will be a combination of all the strategies currently used in addition to face to face and hybrid hearings to meet every need. The client groups for the three jurisdictions are likely to be the last to emerge from the Covid restrictions: by definition, SEND users will have children and young people with special educational needs and disabilities; Care Standards will involve parties working in the care sector as well as education and social care and Primary Health Lists have parties and witnesses who are working in the NHS – all of whom may continue to need services delivered remotely because of potential health risks and issues. Having learnt to work flexibly and remotely, the tribunals will continue to be able to offer that service in the future.

Editor's Note – SEND/CS/PHL have 242 JOHs. In the period from 20 March 2019 – 19 March 2020 they heard a total of 3416 cases, in the period from 20 March 2020 to the present they heard 4043 cases which is a substantial increase as a result of the move to remote hearings. These tribunals are now in the process of arranging exceptional hybrid hearings, where the circumstances require that, and it can be a combination of parties/panel members in court/by video/by phone according to the needs of the individual case. No face to face hearings have been conducted since 20 March 2020.

Tax Chamber, First-tier Tribunal

With thanks to Judge Greg Sinfield, Chamber President.

On 12 March, the government asked everyone to stay at home if they had one of two key symptoms: a high temperature or a new and continuous cough. As a result of this advice, two of our ten salaried judges immediately went into self-isolation in accordance with NHS 111 advice. Over the following 48 hours, several fee-paid judges also self-isolated for various reasons. The next day the Chamber President, Judge Greg Sinfield announced the postponement of our annual judges' conference which had been due to take place the following week. That proved prophetic because, on 16 March, the Prime Minister announced that people should not have any non-essential contact with others and should refrain from all unnecessary travel. He said that everyone should work from home if possible and avoid pubs, clubs, theatres and other social venues. On 18 March, Judge Sinfield issued guidance to salaried and fee-paid judges that they should work remotely from home or elsewhere to the greatest extent possible. With breath-taking speed we had moved into the new world of lockdown but we never closed.

On 19 March, a short statement was issued to the Tax Chamber and its users stating that, until further notice, there would be no face to face hearings and all applications and substantive appeals would be dealt with on papers by a judge sitting alone as far as possible. If a matter could not be dealt with on papers, a hearing by telephone (or video if available) would be arranged as soon as possible.

On 23 March, Judge Sinfield issued a practice statement which re-categorised 'Basic category' appeals against late filing and late payment penalties of up to £20,000 as 'Default Paper' cases (the previous limit was £2,000). That probably changed approximately 200 cases from ones that would be dealt with at a hearing to paper determinations. That is historically lower than the number of such appeals which we would expect to receive but this reflects the fact that HMRC has deferred collection of taxes and VAT so there are far fewer penalties being issued.

'...The tax video platform can now [be used] for hearings of any size...'

The biggest change brought about by lockdown for us, as for all courts and tribunals, was that we were plunged into the world of video hearings. We were fortunate in that the Tax Chamber had been part of a pilot for video hearings for some 18 months before lockdown. Our experience of video hearings was limited to a few judges but it was invaluable when we were catapulted into using the pilot system on a much bigger scale. We called our system the tax video platform (TVP) and initially it could only be used for smaller hearings involving up to eight participants. For larger hearings, we used CVP. The TVP has continued to develop and we can now use it for hearings of any size and it is our default platform although sometimes technical issues still require us to be agile and we hold hearings using CVP, Teams and Skype for Business and even by telephone (although video is far preferable). We have also produced a video to show litigants in person and others unfamiliar with the procedure what happens at a video hearing of a simple tax appeal. The [mock hearing is available online](#) and you may be amazed at the dramatic talents of the judges and members of the Tax Chamber.

When the current restrictions end, our working assumption is that social distancing and localised lockdowns are likely to continue for the next year or possibly longer. Accordingly, we will continue to list video hearings as an alternative for face to face hearings wherever possible while adapting our hearing venues to offer face to face

hearings where necessary. However, it is clear that video hearings provide better access to justice for some, perhaps, many users than the old system of requiring attendance at a hearing centre. For example, we have already agreed with HMRC that, following our experience under lockdown, all applications for approval to issue third party information notices will be made electronically and considered at a video hearing by reference to electronic documents. This will remove the need for HMRC officers to travel to attend hearings which often take no more than 20 minutes or half an hour. Taxpayers could see similar benefits from moving short penalty cases to video hearings which they can attend without, as often happens, losing an entire day in attending.

We also believe that hybrid hearings will become more common in the future. Hybrid hearings can take a variety of forms: JOHs in hearing rooms with parties joining by video and/or audio or different combinations of JOHs joining remotely with parties and/or some tribunal panels in a hearing room. A model where face to face hearings are supplemented by video and telephone participation is likely to go some way to addressing the challenges to transparency and open justice whilst preserving the need for social distancing and access to justice.

We were and remain largely a paper based tribunal but, to improve the efficiency of the appeals process in lockdown, we required users to send all communications (including service of witness statements, documents and authorities) to the Tribunal electronically wherever possible and issued guidance to tribunal users on the format, structure and content of PDF bundles in June 2020. That guidance accelerated and standardised a developing practice which we believe, like the increasing use of video hearings, is here to stay.

Like many organisations, we have faced the challenge in lockdown of maintaining communications with colleagues and users when it is not possible to meet in person. Teams meetings have been both a blessing and a curse but there is no going back. Indeed, some judges and members have said that they feel more involved in the Chamber now that we have regular weekly and monthly update meetings and training sessions by Teams in place of the annual conferences and training days. Our Chamber President has been active in webinars and podcasts and given evidence to the Economic Affairs Finance Bill Sub-Committee of the House of Lords (still available on Parliament TV), to spread the message that we never closed and continue to deal with cases in new and innovative ways in these challenging times.

Going forward, we will keep our approach and processes under review as we respond to changing circumstances. I am confident that we will meet the present and future challenges. I also believe that, while never forgetting the terrible impact of the virus on individuals, Covid-19 will come to be seen as a positive catalyst in the evolution of the Tax Chamber into a modern tribunal that provides access to justice for all in new, efficient and innovative ways.

Editors note – The Tax Tribunal has 57 judges and 54 non-legal members and around 84 admin staff who have been unable to work at capacity due to social distancing requirements. In the six months to 31 January 2021 an average of 107 hearings were conducted per month, which is around 60% of the pre-Covid hearing numbers. This has been less due to remote hearings but more due to reduced staffing.

War Pensions and Armed Forces Compensation Chamber, First-tier Tribunal

With thanks to Judges Hugh Howard and Fiona Monk, Chamber President.

The changing of the guard: The Chamber is small but punches well above its weight, forming, as it does, part of the Military Covenant ensuring that service personnel are compensated for injuries and diseases arising from service. The culture of the Chamber borrows heavily from the military. We have ‘Articles’ rather than ‘Regulations’.

Just before Covid broke out, Judge Kate Markus QC was appointed as acting Chamber President, with operational responsibility vesting in Regional Tribunal Judge Hugh Howard as Senior Judge. Their role was ‘to keep a steady hand on the tiller’ pending the appointment of a new Chamber President. The Chamber has 1.4 salaried judges, 30 fee-paid judges, 30 medical members and 30 retired service members and a TCW. The administrative team of 15 staff are based in Fox Court. The Chamber covers England and Wales and sits in a variety of venues. The sealed order from the Senior President of Tribunals to Judges Markus and Howard was to keep the Chamber ticking over.

The March lock-down closed Fox Court. As a paper-based Chamber we had no access to files, staff or the limited IT. We were missing in action for 12 weeks.

During the shut-down the South East region of SSCS managed to re-open after a hiatus of one week. It came up with a range of solutions for its Tribunals. Using that expertise, SSCS administrative colleagues were deployed to support WPAFCC, providing remote hearing facilities and training clerks. We were back in the battle.

‘Going forward, we will keep our approach and processes under review as we respond to changing circumstances. I am confident that we will meet the present and future challenges.’

We first listed cases where appeals that had been listed during the blackout and panel members had received and retained their papers. This gave the staff room to manoeuvre, when they returned to Fox Court after three months to open the sacks of post and e-mails. Comms were established. Hearings are by BT MeetMe. The panels meet on Skype or Teams to preview appeals and for private deliberations. Judges Markus and Capper drafted protocols, practice guidance and circulated Covid emergency legislation, etc. Recognising that some fee-paid judges were struggling financially, the decision was taken to direct work to them. Assigned salaried judges from other jurisdictions were not called up but held in reserve.

We increased sittings from four to five days a week. Monday travelling days are not required for remote hearings. However, because remote hearings take longer, the number of appeals cleared in each session went down. The complexity of appeals means that they are ill-suited to triage and clearance on a paper basis.

There was a challenge in engaging the with Ministry of Defence and the Royal British Legion (the largest representative organisation) because their staff had been sent home and had limited access to papers and IT. Fortunately, all are well used to operating overseas, as we often hear appeals for personnel who were either recruited from or retired to foreign countries; or, if still serving, are deployed abroad. We are now able to list more hearings than professional representatives can attend. We will be moving to face to face and video hearings in the New Year.

We are the only Chamber where appeals are lodged, not with the Chamber, but with the Ministry of Defence, the respondent. On the basis that we are on a roll, the decision has been taken for the Chamber to take full responsibility for the appeals process. Planning for this complex logistical operation has started.

Having regained the momentum of sitting and recognising the increased demands that direct lodgement will bring for administrative colleagues, the decision has been made to relocate to an established Tribunal hub at Leicester, where we will be more resilient to future crises. Judge Capper has taken the judicial lead for induction training of the new recruits at Leicester.

And, whilst marking time, in close-down, we have commissioned a new Bench Book, to be published shortly.

WPAFCC has achieved a phenomenal amount during the current pandemic. We transfer command to the new Chamber President, Judge Fiona Monk, for what is bound to be an eventful year ahead.

‘WPAFCC has achieved a phenomenal amount during the current pandemic.’

“Now this is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning.”

Winston Churchill – 10 November 1942

Editor’s Note – War Pensions have three salaried judges, one salaried medical member and 90 JOHs (31 judges, 30 medical members and 30 service members). They hear 60-80 cases per month but, due to the difficulties caused by the pandemic and remote working, they have experienced a significant increase in outstanding work.

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Aims and scope of *Tribunals* journal

1. To provide articles to help those who sit on tribunals to maintain high standards of adjudication while remaining sensitive to the needs of those appearing before them.
2. To address common concerns and to encourage and promote a sense of cohesion among tribunal members.
3. To provide a link between all those who serve on tribunals.
4. To provide readers with material in an interesting, lively and informative style.
5. To encourage readers to contribute their own thoughts and experiences that may benefit others.

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