

General Regulatory Chamber- Chamber President's Guidance on Ways of Working during Coronavirus Outbreak

With effect from 23 March 2019 -

1. All cases already listed will be switched to papers or remote hearings or postponed, as appropriate, after consultation with the parties and the trial judge. Standard communications are being prepared.
2. All **new appeals** are to be triaged by Registrars and/or Judges McKenna and Macmillan on receipt. They will be forwarded to the Caseworker inbox for this where received electronically. Registrar Worth will go into Arnhem House once a week to look at any new appeals received on paper;
3. The questions to be asked by the Judge/Registrar at triage (a checklist is being created) are:
 - a) is it urgent - if so follow the Fast Track Protocol (annexed to this Guidance);
 - b) if it's not urgent, issue the standard letters (the letter of acknowledgement will be amended to explain that (i) "remote" hearings will be the norm if a party has elected for an Oral Hearing and (ii) we will not determine case management direction applications unless the party making the application has already discussed the issue with the other party and they have not been able to reach an agreement;
 - c) is this case suitable for an immediate determination by a Judge on the papers which will be issued as a Consent Order after 14 days if there is no objection (with a right for the parties to request a set aside and fresh determination). This will not be applied in the Information Rights jurisdiction but in all other GRC jurisdictions);
 - d) is there any reason why a judge sitting alone should not determine it? If so, what non legal input is required and why (e.g. hydrologists on Nitrate Vulnerable Zone appeals);
 - e) is there any reason why it would not be suitable for determination on the papers or (if an OH has been requested) by remote hearing (video or telephone)? Remote hearings should be held by a judge alone and not usually last for more than half a day. Oral hearings which must take place face to face at a venue will be postponed with no set date.
 - f) should there be a Case Management Hearing (by video or phone)?
4. The standard approach to **existing non urgent cases** will involve a referral to the caseworker inbox for review by a Judge or Registrar at the point where the Respondent's response is received. Any necessary case management directions will

be issued at that stage, to include directions aimed at ensuring a short and focussed remote oral hearing – e.g. preparation by the parties of agreed facts, agreed issues, suggested pre-reading, a chronology, and any jurisdiction-specific prompts;

5. We are in the process of establishing the capability of each Respondent to send in an electronic bundle (as some of them have sent staff to work from home) and our own ability to upload them to ejudiciary. This will determine the listing window, and there might be different timescales for each respondent. Delivery Manager Michelle Foxon is in communication with all Respondents.
6. All cases **already listed** for an Oral Hearing will be postponed, with a request for the parties to consider whether they want to agree to determination on the papers/arrange a remote hearing/ask for postponement. These cases will be referred to a Registrar or Judge for further Case Management Directions once the parties' views are known.
7. The default position is that all cases will be listed for determination by a Judge alone. As at present, our approach to **listing** will be to list all cases before Judges McKenna and Macmillan first, secondly to list any salaried judges who are sitting for us on "Other Judicial Duties Days" (but recognising that such arrangements may cease if they are required to attend to urgent work elsewhere), and thirdly fee-paid judges. It's not clear yet whether we will have sufficient work to list cases before Fee Paid Judges, and we will need to establish who is able to sit, whether they can work from home, whether we can provide them with paper bundles etc. This is to be kept under review.
8. Existing judge -alone paper cases will be forwarded to Judges McKenna and Macmillan for determination whenever they have time. They will decide the order of priority in which they should determine any cases sent to them. We assume that KPIs no longer apply.

A small number of administrative staff can access all the Chamber's IT systems remotely. Otherwise, the ability to do any of the above is dependent on there being sufficient staff in the office in Leicester.

Judge Alison McKenna
Chamber President

23 March 2020

**FIRST-TIER TRIBUNAL
(GENERAL REGULATORY CHAMBER)**

**PILOT FAST TRACK PROTOCOL FOR
DESIGNATED APPEALS
23 March 2020**

1. This Protocol is made on a pilot basis for a period of twelve months from the date below. A review will take place at the end of the pilot.
2. It is recognised that the nature of certain appeals and applications (hereafter referred to as “appeals”) to the General Regulatory Chamber is such that a speedy determination of the appeal is necessary in the interests of justice.
3. This Protocol sets out the procedure by which parties in certain appeals (hereafter referred to as “Designated Appeals”) may obtain a speedier determination of their appeal than would usually be the case. This procedure will be applied unless both parties choose to opt out of the Fast Track Process and the Tribunal agrees.
4. In order to achieve the required expedition, the Tribunal will shorten the timeframe for compliance with its own Procedure Rules¹, in reliance upon rule 5 (3)(a). Its standard approach to case management in Designated Appeals will be as set out below.
5. Unless it is not possible, all documents should be lodged with the Tribunal in electronic format.
6. Designated appeals are those involving:
 - (i) Appeals against Stop Notices served under schedule 3 to the Environmental Civil Sanctions (England) Order 2010;
 - (ii) Applications under s. 166 of the Data Protection Act 2018;
 - (iii) Appeals against protective orders served under s. 76 of the Charities Act 2011;
 - (iv) Appeals against Welfare Enforcement Notices served under regulation 38 of the Welfare at the Time of Killing (England) Regulations 2015;

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/367600/tribunal-procedure-rules-general-regulatory-chamber.pdf

- (v) Appeals against Information Notices served under FOIA, DPA or any other legislation;
- (vi) Any other appeal at the direction of the Chamber President, where the nature of the appeal is such that standard case management would frustrate the purpose of the appeal or would adversely disrupt the business continuity of a party in the case.

IN PARTICULAR

7. The time for the Respondent to file a Response will be within 14 days after the date on which the Respondent receives the appeal.
8. There will be a case management hearing within five weeks of the date on which the appeal is lodged with the Tribunal. This will be by telephone or video conference. Dates to avoid for the case management hearing should be provided to the Tribunal by the Respondent with its Response and by the Appellant by the time for filing a Reply.

IN ADDITION

9. If the parties and the Tribunal agree to a determination on the papers without an oral hearing under rule 32(1), the appeal will be listed for determination no later than the end of the sixth week following receipt of the Notice of Appeal. The Tribunal does not inform the parties the date of a paper determination.
10. If any party requires an oral hearing (which may include attendance by telephone or video link), the date will be set at the case management hearing. The parties must attend the case management hearing with details of their own and any witnesses' dates to avoid and their time estimate for the final hearing.
11. If the Tribunal is not able to give at least 14 days' notice of the actual hearing date and venue, then such shorter notice as is given will be provided under the provisions of rule 34(1)(b) because of the urgent circumstances of such applications.
12. A hearing bundle, to include any witness statements, any exhibits, a chronology of events and an agreed statement of facts is to be prepared by the Respondent and an electronic copy is to be lodged with the Tribunal at least 7 days prior to the date for the substantive hearing.
13. Final written submissions must be exchanged between the parties and lodged with the Tribunal in electric format 3 days after the hearing bundle is lodged with the Tribunal.
14. The Tribunal will aim to send to the parties its written Decision within 7 days of the oral hearing or paper determination.

Judge Alison McKenna

Chamber President

23 March 2020