

# **PRESIDENTIAL GUIDANCE ON THE CONDUCT OF PROCEEDINGS IN THE UPPER TRIBUNAL, LANDS CHAMBER DURING THE COVID-19 PANDEMIC**

**Revised 1 May 2020**

1. This guidance applies to all proceedings in the Upper Tribunal, Lands Chamber (“the Tribunal”) with effect from 1 May 2020. It supersedes the previous guidance that had effect from 24 March 2020.
2. The purpose of this guidance is to inform users of the Tribunal how business is currently being conducted in the Tribunal during the Covid-19 pandemic. It should be read alongside the Pilot Practice Direction on contingency arrangements in tribunals issued by the Senior President of Tribunals on 19 March 2020<sup>1</sup>, the Pilot Practice Direction: Video/Audio Hearings in the First-Tier Tribunal and the Upper Tribunal issued on 2 April 2020<sup>2</sup> and rule 8 of The Tribunal Procedure (Coronavirus) (Amendment) Rules 2020 (S.I. 2020 No. 416), which amends the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 (“the Rules”).
3. The current public health restrictions are expected to remain in place for a number of months, during which it will not be possible for Tribunal business to be conducted in the normal way. With the cooperation of professional and lay users and parties, and so far as it is able to do so fairly and justly, the Tribunal will continue to determine as many applications, references and appeals as possible within the judicial and administrative resources available to it.
4. The procedural rules regulating the conduct of proceedings in the Tribunal are flexible and clear and are contained in the Rules, as amended. Of particular significance is the overriding objective of the Rules, which is to enable the Tribunal to deal with cases fairly and justly (rule 2(1)). The Tribunal is guided by this objective in all its decision making and case management, and parties are required to help the Tribunal to further this objective and to cooperate generally with the Tribunal (rule 2(4)).
5. The following features of the Rules are especially relevant at this time.
6. Rule 5 confers wide case management powers on the Tribunal. Subject to the provisions of any enactment it may regulate its own procedure (rule 5(1)); examples of the variety of directions the Tribunal may give are provided in rule 5(3). Further powers concerning evidence and the form in which it may be received are contained in rule 16.
7. In addition to post, fax and other hard copy methods of delivery, any document to be provided to the Tribunal under the Rules may be sent by such method as

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<sup>1</sup> <https://www.judiciary.uk/publications/pilot-practice-direction-contingency-arrangements-in-the-first-tier-tribunal-and-the-upper-tribunal/>

<sup>2</sup> Available at <https://www.judiciary.uk/coronavirus-covid-19-advice-and-guidance/>

the Tribunal may permit or direct (rule 13(1)). E-mail is a permitted method of delivering documents to the Tribunal, and is the preferred means of communication for all purposes. Any document which is required to be delivered to the Tribunal may be delivered by e-mail to [lands@justice.gov.uk](mailto:lands@justice.gov.uk) and will be treated as having been delivered at the time it is recorded as having been received in the Tribunal's inbox.

8. Part 9 of the Rules is concerned with hearings. A hearing means an oral hearing and includes a hearing conducted in whole or in part by telephone, video link or other electronic means (rule 1(3)).
9. The Tribunal may make any decision without a hearing, but before deciding whether to hold a hearing it must have regard to any view expressed by a party to the proceedings (rule 46).
10. All hearings should be held in public, and each party is entitled to attend, but the Tribunal may direct that a hearing is to be held in private (rules 48(1)-(3A)).
11. It will be for the Judge or Member to whom a matter has been allocated to determine the procedure to be adopted. The Tribunal will apply three principles:
  - First, where a decision can be made fairly and justly without a hearing, and the parties are content that it should be, there will be a presumption in favour of a determination on paper.
  - Secondly, where a party or parties would prefer a hearing, there will be a presumption that the hearing will be conducted remotely, by telephone or video link.
  - Thirdly, if a hearing conducted remotely by telephone or video link would not be fair or practical, the hearing may need to be postponed and relisted on a later date.
12. Some matters are already determined by the Tribunal on paper without an oral hearing, and this practice will continue. Examples include applications for permission to appeal from the First-tier Tribunal, uncontested applications under section 84, Law of Property Act 1925, and case management hearings where the parties have agreed appropriate directions and the Tribunal is satisfied a hearing is not required.
13. Most appeals from the First-tier Tribunal, some appeals from Valuation Tribunals, and some compensation references are concerned with issues of law or valuation principle and can be determined on the basis of written submissions, with each side having the opportunity to comment on the other side's evidence and argument. Case management where the parties have not agreed directions is also capable of being undertaken on paper or at a short telephone hearing. In some cases, the Tribunal may be assisted by

supplementary oral submissions, giving the Judge or Member the opportunity to ask questions and ensure that the points have been properly explained.

14. Cases involving limited oral evidence, or evidence from only a small number of witnesses, are capable of being conducted remotely by video link. In cases where the issue depends on the evidence of one expert witness on each side, a remote hearing should be both practical and capable of producing a fair and just outcome. The form such hearings are likely to take will broadly reflect the form of a traditional hearing, but the Tribunal will expect parties to be flexible. In all cases it will be for the Tribunal, with the assistance of submissions from the parties, to determine the form and duration of the hearing, the issues on which evidence and submissions will be received, and the extent to which cross examination is required.
15. Some cases may be more difficult to conduct remotely. Those involving a large number of witnesses and significant disputes of fact or valuation opinion which in normal circumstances would be determined at a hearing with oral evidence and cross examination may not be practical. Cases involving multiple parties or objectors, or where some or all parties are not professionally represented may give rise to similar issues. The hearing of such cases may need to be postponed. No case will be postponed indefinitely and when a direction is given to postpone a listed hearing the Tribunal will either fix a new hearing date or will fix a date in the future when it will undertake a review to determine whether the matter can now safely be re-listed.
16. Before deciding whether a hearing is necessary and how it will be conducted the Tribunal will ask the parties for their views. The Tribunal will always give weight to the parties' preferences, but each decision will be for the Tribunal to make. The Tribunal will contact parties in cases which have already been listed and will ask them to express a preference for how their case should now proceed. A short case management hearing may quickly be arranged to enable parties to discuss the most appropriate procedure with the Tribunal and with each other.
17. The Tribunal will expect a high level of cooperation between parties and between their professional representatives. Parties are strongly encouraged to communicate directly with each other and to consider how their case can most effectively be presented and determined. Well-focussed statements of agreed facts and statements of issues and concise hearing bundles are all likely to make a remote hearing or a determination on paper more effective.
18. The Tribunal is currently equipped to use Skype for Business and hearing arrangements will be made by the Tribunal's staff. If parties do not have internet access or anticipate connectivity problems, for example because of poor broadband reception in their area, they must inform the Tribunal when the form of the hearing is being decided. In such cases the use of an alternative video conferencing product or a telephone conference call facility may be a suitable alternative.

19. The Tribunal will record remote hearings. The parties are not permitted to record hearings.
20. On 2 April 2020 the Senior President of Tribunals issued a Practice Direction on Video/Audio hearings and the directions now have the force of law under the amendment to the Rules noted in para 2 above. This applies to remote hearings in the Lands Chamber and gives the Tribunal power to hold a hearing in private if necessary, where it is impracticable in current circumstances to hold a hearing to which the public may gain access. Nevertheless, the Tribunal seeks to make all remote hearings available to media representatives.
21. The date and time of substantive hearings will be published in the Royal Courts of Justice or Rolls Building cause lists and can be accessed at <http://www.justice.gov.uk/courts/court-lists/lands-tribunal>.
22. Media representatives may observe remote hearings and should contact the Tribunal's listing staff by email at [Lands@Justice.gov.uk](mailto:Lands@Justice.gov.uk) to make arrangements. With the Tribunal's consent any person may listen to a recording of a remote hearing at a court or tribunal building or may request a transcript.
23. The Tribunal will need to be provided with a hearing bundle and will give directions whether this should be provided in electronic form or in hard copy. Electronic bundles should be sent by email to [lands@justice.gov.uk](mailto:lands@justice.gov.uk) unless the Tribunal directs an alternative method of access; hard-copy bundles should be delivered to the Upper Tribunal (Lands Chamber) 5<sup>th</sup> Floor, Rolls Building, Fetter Lane, London EC4A 1ML. Guidance on the form of electronic bundles is contained in the Appendix.
24. Where a site visit is necessary the Tribunal will take that into account in deciding whether a case can fairly and practically be dealt with without a hearing or by a remote hearing. If, after consulting the parties, the Tribunal is satisfied that an unaccompanied, external inspection will meet the needs of the case and can be conducted safely, it may take place.
25. Finally, the Tribunal appreciates that in the current exceptional circumstances parties may not always be able to comply with procedural directions in time. The Tribunal will be sympathetic to requests for extensions of time, especially where these are agreed between the parties. Many of the Tribunal's procedural directions already allow parties to agree short extensions of time, without the need for an application. In any case where such an order has already been made, the parties may now agree an extension of up to one month for any step, provided they also agree any consequential extensions of other time limits and inform the Tribunal, and provided the hearing date is not put at risk. In other cases, although the Tribunal is likely to be sympathetic, an extension should not be taken for granted and a proper explanation why it is required should always be provided.

1 May 2020

### **Appendix - Electronic hearing bundles**

If an electronic bundle is directed by the Tribunal the bundle **must** be suitable for use with Adobe Acrobat Reader. It should be prepared as follows:

1. The document must be a single PDF.
2. It must be numbered in ascending order regardless of whether multiple documents have been combined together (original page numbers of documents will be ignored and only the bundle page number will be referred to).
3. It should contain only documents and authorities that are essential to the remote hearing. Large electronic files can be slow to transmit and unwieldy to use.
4. Index pages and authorities must be numbered as part of the single PDF document.
5. The default display view size of all pages must always be 100%.
6. Texts on all pages must be selectable to facilitate comments and highlights.
7. The bookmarks must be labelled indicating what document they are referring to (best to have the same name or title as the actual document) and also display the relevant page numbers.
8. The resolution on the electronic bundle must be reduced to about 200 to 300 dpi to prevent delays whilst scrolling from one page to another
9. The index page must be hyperlinked to the pages or documents they refer to.