

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

Revised 26 June 2020

1. This guidance applies to all proceedings in the Upper Tribunal, Lands Chamber (“the Tribunal”) with effect from 26 June 2020. It supersedes the previous guidance that had effect from 1 May 2020.¹
2. The purpose of this revision is to update users of the Tribunal on changes that are now being made to how the Tribunal’s business is being conducted, as the Covid-19 pandemic restrictions are being eased.
3. The contingency arrangements in the Pilot Practice Directions issued by the Senior President of Tribunals and in amendments to The Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 (“the Lands Chamber Rules”) are still in force and provide for hearings in private or fully remote video/audio hearings where necessary and appropriate.²
4. During the 3-month period since the start of lockdown, the Tribunal has used these emergency powers to continue to offer a service to users and to conduct hearings and determine cases. Most hearings listed for April, May and June have taken place as fully remote hearings using video conferencing platforms; others have been determined on paper, after considering the views of the parties. Occasionally, cases that were unsuited to remote hearings for particular reasons, or where the parties or their expert witnesses had logistical difficulties, were adjourned by consent to be heard in the autumn or early in 2021.
5. Notwithstanding the difficulties experienced in all sectors, over 80% of the planned hearings have taken place. All of the Tribunal’s judges and members have continued to work full-time from home. I am grateful to them and to the Tribunal’s staff and managers, and all users, for their cooperative attitude and positive reaction to the difficulties.
6. During lockdown, the Tribunal was only able to offer a very limited personal response to users, owing to the absence of staff from the office and limits to what could be achieved remotely. Since May, that position has significantly improved and, although there are still some delays in registering new cases, processing documents and responding to emails, a nearer to normal service has now resumed, including a limited telephone service.
7. Users are however asked to bear in mind that the Tribunal will still take longer than usual to respond, especially to routine enquiries, and that they can **assist**

¹ Available at <https://www.judiciary.uk/coronavirus-covid-19-advice-and-guidance/#tribunals> under Lands Chamber section

² References to the PDs and Sis are contained in the previous version of this Guidance: see note 1 above.

the Tribunal by communicating by email wherever possible, to lands@justice.gov.uk . Any document required to be delivered to the Tribunal may be sent to that email address and will be treated as delivered at the time when it is recorded as having been received in the Tribunal's inbox. Hard copies (e.g. hearing bundles) may also be sent or delivered to the Tribunal at 5th floor, The Rolls Building, Fetter Lane, London EC4A 1NL.

8. In view of the government's relaxation of the pandemic restrictions and business needs, the Tribunal is now working towards resuming normal operations and will expect to make less use of the emergency powers from 1st August 2020. 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 expect to return to face-to-face hearings in the Royal Courts of Justice as from 1 August 2020**. Parties in all cases listed for hearing on or after 1 August 2020 can therefore expect that their case will be heard (usually in Court 21) in the Royal Courts of Justice.
9. In the event of further lockdown measures requiring a reversion to fully remote hearings, any parties with hearings listed will be notified in good time in advance of the hearing date.
10. The Tribunal intends during July 2020 to publish new Practice Directions, replacing the Lands Tribunal Practice Directions 2010 with effect from 1 August 2020. The Tribunal published and consulted extensively on draft practice directions in the period December 2019 to February 2020 and is grateful for all responses received. The new Practice Directions will make improvements to the way in which the business of the Tribunal is conducted and will give better guidance to users.
11. The procedural rules regulating the conduct of proceedings in the Tribunal are flexible and clear and are contained in the Lands Chamber Rules, as amended. Of particular significance is the overriding objective of the Lands Chamber 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)).
12. In the previous version (1 May 2020) of this Guidance³, I drew attention (at paras 6-10) to the features of the Lands Chamber Rules that were especially relevant during the pandemic. These features remain important and will guide the case management of all applications, references and appeals issued in the Tribunal, and the decision on what matters are determined on paper and what type of hearing will be held.
13. 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 continue to consult and have regard to the views expressed by the parties.

³ See note 1 above.

14. The matters that the Tribunal used to determine on paper will continue to be determined without a hearing. Examples include applications for permission to appeal from the First-tier Tribunal, most uncontested applications under section 84 of the 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. In addition, where the parties agree that a dispute may appropriately be resolved by written submissions and counter-submissions, the Tribunal will be receptive to doing so.
15. In other cases, a hearing will be held. There will no longer be a presumption in favour of a fully remote hearing, save for case management hearings. As from 1 August 2020, most substantial hearings will be held in court. Where it is appropriate or necessary, e.g. where space restrictions in court make a face-to-face hearing unfair to one or more of the parties, any hearing may be directed to be held remotely.
16. Social distancing requirements may limit the number of participants on each side, press and public that can be accommodated in the courtroom. The Tribunal will notify the parties in advance what number of spaces are available for each party for the hearing, taking account of any restrictions that are in force at the time. Parties are welcome to negotiate between themselves a different share of the available space from day to day but the Tribunal's staff will not become involved. The Tribunal will continue to provide remote access to hearings for others, including the public and press, if requested, and where possible and lawful to do so.
17. All parties and professional representatives who attend a hearing in court must comply with any direction given by the Tribunal or court staff before, during and after the hearing, as well as maintaining the appropriate social distancing and any relevant requirements at all times.
18. The Tribunal will continue to 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-focused statements of agreed facts and statements of issues and concise hearing bundles make a remote hearing or a determination on paper more effective.
19. The Tribunal is currently equipped to use Skype for Business and, where required, remote hearing arrangements will continue to 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.
20. The Tribunal will record remote hearings. The parties are not permitted to record hearings.

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 and any other interested person may attend Tribunal hearings which take place in open court, subject to space limits, and may observe remote hearings. They should contact the Tribunal's listing staff by email at 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 (which will be provided at the expense of the person making the request).
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 unless the Tribunal directs an alternative method of access; hard-copy bundles should be delivered to the Upper Tribunal (Lands Chamber) 5th Floor, Rolls Building, Fetter Lane, London EC4A 1NL. Guidance on the form of electronic bundles is contained in the Appendix and should be complied with.
24. Where a site visit is necessary, the Tribunal will consult the parties about the requirements for the visit. If the Tribunal is satisfied that an unaccompanied, external inspection will meet the needs of the case, it will take place on that basis. If an internal inspection is required, it will be carried out with the agreement of the relevant owner and in accordance with the government's guidance of 11 May 2020 "Working safely during Covid-19 in other people's homes" or any updated guidance published. The current guidance is found at <https://assets.publishing.service.gov.uk/media/5eb967e286650c2791ec7100/working-safely-during-covid-19-other-peoples-homes-110520.pdf>
25. Finally, the Tribunal appreciates that in the current difficult 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 up to 1 August 2020 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.

Sir Timothy Fancourt, President

24 June 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.