

First-Tier Tribunal, Asylum Support (FTT-AS)

Road-map to Recovery

4/10/2020

Introduction:

Access to justice, the delivery of fair hearings with the minimum of delay and the safety of all who use or work in the Tribunal remain our priorities.

This road-map sets out the Tribunal's response as we enter the next phase of Covid-19 planning. These plans are necessarily fluid and will be constantly revised in view of national and international developments.

We have used a seasonal view, but to some extent the plan and timescales must be seen as aspirational, since changes need to be tested in practice and many elements (such as national travel, the availability of interpreters and the reopening of organisations providing face to face assistance for appellants) fall outside of the Tribunal's control.

The FTT-AS's workload is also largely outside of its own control, since the number of appeals is directly linked to the number of decisions to refuse or discontinue support made by UKVI. The Tribunal is mindful that UKVI are currently reviewing the existing support provision which, throughout the pandemic, has been at such a level as to drastically reduce the Tribunal's appeal intake. A return to "business as usual" on the part of UKVI would result in a large influx of appeals.

The Tribunal's capacity to respond to any such increased intake is necessarily limited by the reduction in face to face hearing capacity required to keep FTT-AS users, staff and judges safe, the speed at which it is possible to develop fully-functioning remote mechanisms (for both hearings and administration) and a reduction in available human resources, including typing support. We have also observed that telephone hearings tend to take longer than their face to face counterparts and the experience of other Tribunals is that remote video hearings are similarly time-consuming. This will act to reduce our potential throughput.

The Tribunal's work is governed by Practice Directions, Procedure Rules and guidance. The Senior President's Pilot Practice Direction of 14 September 2020 and the Amended Procedure Rules of 10 April 2020 remain in force at the date of this road-map.

Summer 2020:

Risk assessments were conducted and safety arrangements were put in place. The Tribunal has ensured that waiting rooms for parties; consulting rooms for representatives; offices for presenting officers and interpreters; working space for staff and judges and communal areas are laid out in ways which enable social distancing to be maintained. Administrative staff have adopted a rota system of home and office working.

Some face to face hearings could theoretically have been conducted at Import Building. However, our appellants are predominantly located great distances from the Tribunal and may even require UKVI to provide overnight accommodation to visit the court. Given government guidance and concerns about a possible resurgence of the virus, our emphasis

remained therefore on remote hearings and paper determinations in order not to give rise to unnecessary risk.

The FTT-AS prepared for any potential increase in appeal intake by ensuring that our fee-paid judges were trained on remote telephone hearings and paper determinations, working wholly from home unless technology limited their access. As other jurisdictions re-opened for business, the experience of our fee-paid judges with new systems of working increased, but their availability decreased.

The Tribunal invested in the Kinly Common Video Platform (CVP) cloud-room technology, enabling all participants to join hearings from any internet enabled device that has a camera and microphone. Salaried judges and some administrative staff were trained in its use and demonstrations were run for fee-paid judges.

A telephone option is available if a participant proves unable to access a video hearing. However, there are still likely to be limitations to the accessibility and efficacy of this resource for unrepresented, non-English speaking appellants, who may have limited or no access to private wifi and insufficient technology, data or bandwidth. This is particularly the case when few advice agencies are open for face to face work. We therefore ran demonstrations for our Home Office Presenting Officers and Duty Advocacy Scheme (the Asylum Support Appeals Project) with a view to assessing the best use for the facility.

We explored other ways of increasing our capacity to hear appeals, whilst not requiring participants to travel long distances or creating hazardous overcrowding in Import Building. For example, spider-phones have been made available for each hearing room in order that some participants can join hearings by telephone and additional monitors have been installed in judicial chambers and made available for home-working in order to facilitate telephone or video hearings using electronic bundles.

Autumn 2020:

To what extent the Tribunal opens for face to face hearings is informed by our ongoing risk assessments, the national position and local lockdowns. It would only be possible to operate at reduced capacity, which for the FTT-AS is likely to mean a maximum of perhaps 2 or 3 hearings rooms in use per day, with a maximum of 2 hearings per room at staggered start times. Administrative staff will continue to attend Import Building on a rota basis.

During this phase and only if the workload necessitates it and it can be safely achieved, the Tribunal will run a mixture of remote and face to face hearings and paper determinations. Safety will remain our priority and our emphasis is unlikely to revert to a majority of hearings being conducted face to face.

In order to distribute the administrative work, remote hearings will be conducted by judges using electronic bundles and face to face hearings will use paper versions. Some hearings will necessarily be a hybrid of face to face and remote attendance, either by design or default. The Tribunal will adopt a flexible approach as far as possible.

The accessibility and use of CVP hearings will continue to be reviewed. Training sessions will be conducted with solicitors in Scotland, with a view to running pilot hearings in which they assist their appellant clients to access the system. Feedback from advice agencies and from UKVI as to what assistance with joining CVP hearings could be offered to appellants in other local areas will be sought in our October 2020 User Group meeting.

In parallel we will contact our partner courts nationwide in order to establish whether they can continue to offer traditional video technology (requiring appellants to attend their local court and other participants, including the judge, to be based in an Import Building court room.) However, these courts are subject to the same limitations on opening as the Tribunal and some are not yet open to the public at all or are in areas subject to local lockdown.

We do not intend to revert to our previous time limits at this stage, since these systems have worked well in enabling the Tribunal to continue to determine appeals throughout lockdown. We also recognise that a different approach to determining appeals, combined with difficulties in obtaining evidence and travelling due to ongoing pandemic restrictions, are likely to mean that more time is needed before an appeal is hearing-ready.

In the light of the late submission of very large quantities of evidence and arguments, which would not be sustainable if appeal numbers significantly increased, we may look to vary slightly the processes currently agreed with the Presenting Officers and the Asylum Support Appeals Project for exchanging evidence and submissions.

The Senior President's Pilot Practice Direction has been renewed until 18 March 2021 and the Tribunal Procedure (Coronavirus) (Amendment) Rules 2020 - setting out the Tribunal's amended powers to determine proceedings without a hearing - remain in force until March 2022 unless varied before that time. Any changes to these provisions, such as the removal of the emphasis on paper hearings in certain limited circumstances, may reduce the number of appeals that the Tribunal is able to process.

Winter 2020:

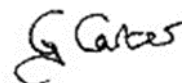
This will be a period of consolidation and reflection, following feedback from stakeholders at a User Group meeting held by telephone conference in October.

Our approach to the balance between face to face hearings, remote hearings (telephone and/or video) and paper determinations and how we determine which cases are suitable for which type of determination will be reviewed according to lessons learned over the previous months, public health guidance and any new instructions issued by the Senior President.

It is anticipated that, even when (and if) the Tribunal's capacity for face to face hearings can be safely expanded, telephone and video hearings and paper determinations will continue to be offered as an alternative. The type of hearing listed will be a judicial decision, governed by legislation and guidance and taking into account any submissions made by the parties and the availability of the various alternatives.



Sehba Haroon Storey
Principal Judge
FTT - Asylum Support



Gill Carter
Deputy Principal Judge
FTT – Asylum Support