

GUIDANCE ON THE CONDUCT OF PROCEEDINGS IN THE UPPER TRIBUNAL, TAX AND CHANCERY CHAMBER DURING THE COVID-19 PANDEMIC

The following guidance replaces that issued on 23 March 2020. It shall apply until further notice to all applications and hearings in the Tax and Chancery Chamber of the Upper Tribunal. It is to be read alongside the Amended Pilot Practice Direction on contingency arrangements in tribunals issued by the Acting Senior President of Tribunals on 14 September 2020 (which can be found at: <https://www.judiciary.uk/wp-content/uploads/2020/09/15-Sept-20-SPT-Amended-General-Pilot-Practice-Direction.pdf>)

(1) Applications which are currently disposed of without a hearing will continue to be disposed of without a hearing. So far as possible, any papers relevant to such applications will be scanned and supplied to the tribunal or forwarded by email.

(2) Matters, including substantive hearings, whether involving an appeal from the First-tier Tribunal or otherwise, which are currently dealt with at a hearing shall continue to be dealt with at a hearing (unless the parties and the judge agree that the matter can be dealt with on the papers alone without a hearing), subject to the following:

(3) The hearing may take one or other of the following forms: an in-person hearing (with all participants attending in person in a courtroom); a remote hearing (with all participants attending via either video or telephone conferencing technology); or a hybrid hearing (with some participants attending in person and others attending remotely).

(4) In advance of the hearing, the tribunal will contact the parties with either a recommendation, or a request for views from the parties, as to the form of the hearing (and, if relevant, the technology to be used). The tribunal will, so far as it is possible to do so, inform the parties of the restrictions and measures (including limits on the number of persons that can attend the in-person hearing) necessary to comply with social distancing requirements for an in-person hearing (although the precise restrictions will not be known until a court room is assigned to the hearing, which may be only shortly before the hearing date).

(5) Where the tribunal makes a recommendation under paragraph (4) above, if the parties agree with that recommendation, the hearing will be conducted in accordance with it, subject to any further order of the tribunal.

(6) If the parties do not agree with the tribunal's recommendation, and in any case where the tribunal requests views from the parties, they shall make written submissions to the tribunal (within such time period as the tribunal shall require) as to the form of the hearing (including as to the technology they wish to be used). The tribunal shall reach a decision as to the form of the hearing in light of the submissions of the parties.

(7) The procedure outlined in this guidance is intended to promote flexibility as to the form in which hearings are to be conducted, taking into account the reasonable requirements of all parties and changes from time to time in government guidelines in response to the pandemic. In the event that circumstances change, following the decision made under either paragraph (4) or (6) above, such that the proposed form of hearing is no longer appropriate, the tribunal may order a different form of hearing. If the circumstances of a party change, such that the proposed form of hearing is no longer appropriate, they shall inform the tribunal as soon as reasonably practicable.

(8) Any recommendation or decision under paragraphs (4), (6) or (7) above may be made by the Upper Tribunal Judge assigned to the case, in consultation (where appropriate) with the Chamber President.

(9) The tribunal will record the hearing. The parties are not permitted to record the hearing. Professional transcribers may record the hearing, where they are permitted to attend the hearing remotely, where that is necessary for the purposes of transcribing it.

(10) In the case of a remote or hybrid hearing, the hearing will not proceed unless and until the tribunal is satisfied that the relevant technology is available to enable the hearing to be conducted fairly and in accordance with the interests of justice and for it to be recorded by the Tribunal.

(11) The form of the hearing will appear, so far as possible, on the cause list.

(12) Remote and hybrid hearings will, so far as possible, still be public hearings unless the tribunal directs in accordance with Rule 37(2) or Rule 37(2ZA) of the Tribunal Procedure (Upper Tribunal) Rules 2008 that the hearing be held in private.

(13) The parties should prepare electronic bundles of documents for use at a remote hearing, in accordance with the guidance at Annex 1 to this guidance note. If requested by the tribunal, hard-copy bundles should also be provided. All hard-copy bundles should, unless the tribunal directs otherwise, be delivered to the Upper Tribunal Tax and Chancery Chamber

administrative office on the 5th floor of the Rolls Building. All electronic bundles should, unless the tribunal directs otherwise, be sent by email to uttc@Justice.gov.uk.

Dated: 16 October 2020

Sir Antony Zacaroli, President of the Upper Tribunal, Tax and Chancery Chamber

Annex 1: Electronic bundles—Guidance Notes

- (1) An electronic bundle is a single PDF document containing an organised collection of electronic copies of documents for use at the hearing. In most cases, two electronic bundles should suffice—one hearing bundle containing the key documents for the hearing, and another for authorities.
- (2) If documents are to be added after the electronic bundles have been sent, collate all the additional documents in one bundle.
- (3) An index or table of contents of the documents must be prepared. Where possible, all entries should be hyperlinked to the indexed document. In general, the table of contents should be in chronological order and provide a brief description of each document. Large bundles may be divided into sections each in chronological order and shown accordingly in the index or table of contents.
- (4) If possible, all bundles must be the subject of OCR (optical character recognition). This is the process which turns the document from a picture of a document to digitized printed text which can be read as text so that the document becomes word-searchable and words can be highlighted/marked in the document by the tribunal and the parties before and during the hearing. Not all documents may be convertible with OCR but most should be. Free OCR software is available online.
- (5) All documents should appear in the bundle in portrait mode. No document should appear upside down. Where outsize documents are included (e.g. large spreadsheets or drawings), they should be fitted onto a single page but be capable of being read with adequate clarity by use of the ‘zoom’ function.
- (6) The default view for all pages in the bundle should be set as 100%.
- (7) All pages in a bundle or series of bundles must be numbered consecutively, and if possible, by computer generated numbering or at least in typed form (if added by a scanner), and not numbered by hand. The page numbers shown in the index should correspond with the page numbers of the PDF file if possible.
- (8) All significant documents and all sections in bundles must be bookmarked for ease of navigation with an appropriate description as the bookmark including the page number of the document.

