

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

Revised 18 January 2021

## Introduction

1. This guidance applies to all proceedings in the Upper Tribunal, Lands Chamber (“the Tribunal”) with effect from 18 January 2021. It supersedes the previous guidance which had effect from 26 June 2020<sup>1</sup> and the updates dated 28 September 2020 and 3 November 2020.<sup>2</sup>
2. The purpose of this revision is to inform users of the Tribunal of changes that are now being made to how the Tribunal’s business is being conducted, in light of the continuing lockdown in Wales and the Prime Minister’s announcement on 4 January 2021 that England will go back into a national lockdown for a period of at least six weeks beginning on 6 January 2021.
3. The contingency arrangements in the Amended General Pilot Practice Direction: Contingency Arrangements of the First-tier Tribunal and the Upper Tribunal 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.
4. 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)).
5. The Tribunal has recently published new Practice Directions, replacing the Lands Chamber Practice Directions 2010 with effect from 19 October 2020. The new Practice Directions make improvements to the way in which the business of the Tribunal is conducted and give guidance to users. All users of the Tribunal should be aware of those parts of the Practice Directions relevant to their case. The Practice Directions are at:

<https://www.judiciary.uk/wp-content/uploads/2020/10/19-Oct-20-SPT-Practice-Directions-UT-Lands-Chamber-002.pdf>

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<sup>1</sup> <https://www.judiciary.uk/wp-content/uploads/2020/06/Presidential-guidance-on-the-conduct-of-proceedings-in-the-Upper-Tribunal-Lands-Chamber-during-the-COVID-19-pa.pdf>

<sup>2</sup> <https://www.judiciary.gov.uk/wp-content/uploads/2020/11/04-Nov-2020-SPT-Lands-Chamber-Covid-Guidance-update-3.11.20.pdf>

## **Recent experience**

6. During the periods of lockdown and restriction in 2020 the Tribunal continued to offer a full service to users, receiving and managing new proceedings, conducting hearings and determining cases. The requirement for social distancing in the Tribunal's administrative offices and the resulting need for many staff to work from home, meant that responding to enquiries, especially by telephone, was slower than usual during the original lockdown and for a period of recovery which followed. By the autumn that position had significantly improved and a near normal service had resumed. This was made possible by the resilience and flexibility of the Tribunal's staff and judiciary, and by the cooperation of the Tribunal's users. I am grateful to all who contributed to the continuation of the Tribunal's work during an exceptionally difficult period.
7. Between March and August 2020 most hearings in the Tribunal took place using digital video conferencing platforms. Face to face hearings resumed for some cases from August until November, while others remained on-line; "hybrid" hearings were also conducted. Decisions on the most appropriate format for each case were taken by the judiciary after considering the views of the parties. Very few hearings were postponed, and where this was necessary cases were rescheduled and completed later in the year, or are due to be heard early this year.
8. The Tribunal and its regular users have become very familiar with revised methods of working. The experience and cooperation which has been developed during 2020 will underpin the conduct of business during the resumed period of lockdown.
9. During the period of lockdown commencing on 6 January 2021 so far as possible the business of the Tribunal will be conducted as normal, in accordance with the Lands Chamber Rules and Practice Directions, subject to modifications concerning the form of hearings which I explain below. I emphasise the following matters.

## **Communication and cooperation**

10. Communication with the Tribunal, especially on routine matters, should be by email wherever possible, to [lands@justice.gov.uk](mailto:lands@justice.gov.uk)
11. Any document required to be delivered to the Tribunal should be sent to that e-mail address and will be treated as delivered at the time when it is recorded as having been received in the Tribunal's inbox. This direction applies to new appeals, applications and references, all of which can be commenced by this method, as well as to documents in existing cases.
12. Litigants in person without convenient access to e-mail may send or deliver documents to the Tribunal at 5<sup>th</sup> floor, The Rolls Building, Fetter Lane, London EC4A 1NL. Hearing bundles or other hard copy documents which cannot conveniently be sent by e-mail may also be sent or delivered to that address.

13. 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 all hearings and determinations on paper more effective.
14. The Tribunal appreciates that during periods of lockdown 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 other cases, although the Tribunal is likely to be sympathetic, an extension should not be taken for granted and any application for additional time should be made promptly and should include a proper explanation why it is required.

### **Hearings**

15. The Tribunal will decide in each case what form a listed hearing should take, or whether an adjournment is necessary, after considering the views of all parties. It is a case management decision for the Judge or Member who will be hearing the case.
16. Where the parties agree that a dispute which has been listed for hearing may fairly be resolved by written submissions and counter-submissions, the Tribunal is likely to be receptive to doing so. In other cases too, the Tribunal should consider whether a case can fairly be determined on the basis of written submissions and counter-submissions from the parties.
17. Otherwise, a hearing listed to take place between the date of this Guidance and the date on which the new lockdown is lifted is likely to proceed on the listed date using either the CVP or Skype for Business digital video-conferencing platforms, unless the interests of justice make it appropriate for the hearing to be conducted face to face.
18. The Tribunal will consider in those circumstances whether it is appropriate to hold a face to face hearing on the listed date. Adjournment to a future fixed date should be regarded as a last resort.
19. Any party who considers that a hearing cannot fairly take place using a digital platform should inform the Tribunal and the other parties as soon as possible. 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 a telephone conference call facility may be a suitable alternative.

20. 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 will continue to be dealt with without a hearing.
21. These arrangements will be kept under review.

### **Practical hearing arrangements**

22. The Tribunal will contact the parties or their representatives during the week before any listed hearing to provide a link to enable access to the hearing and to explain the arrangements which it will make. Further information on what to expect at a hearing conducted remotely can be found at:

<https://www.gov.uk/guidance/what-to-expect-when-joining-a-telephone-or-video-hearing#our-telephone-and-video-hearing-platforms>

23. The Tribunal will require a hearing bundle for all substantive hearings and will give directions for this to 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 has been published on the form of electronic bundles and should be complied with. The guidance is at:

<https://www.judiciary.uk/wp-content/uploads/2020/11/04-Nov-20-SPT-Lands-Chamber-Guidance-for-Electronic-Hearing-Bundles-031120.pdf>

24. The Tribunal will record all hearings, including those conducted using digital platforms. The parties and any other person attending a hearing are not permitted to record or take images of hearings.
25. The date and time of substantive hearings will be published in the Royal Courts of Justice cause lists. These should be checked the afternoon before the scheduled hearing and can be accessed at:

<http://www.justice.gov.uk/courts/court-lists/lands-tribunal>.

26. Media representatives and any other interested person may attend Tribunal hearings which take place face to face, subject to space limits, and may observe remote hearings. They 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 (which will be provided at the expense of the person making the request).

## **Site visits and inspections**

27. 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, or that an internal inspection of occupied residential premises can safely take place in accordance with any applicable government guidance, it will take place on that basis. Otherwise, an internal inspection of occupied residential premises is likely to have to be postponed until after the lockdown has been lifted.

## **Future developments**

28. Finally, the Tribunal has begun to adopt a new electronic filing and case management system (CE-file), as used by the Business and Property Courts and Queen's Bench Division in the High Court of Justice. This will become available for public use at the end of February 2021 and will make it easier for parties and their professional representatives to issue proceedings and file documents in the Tribunal. In time, it will substantially improve the quality of service that the Tribunal is able to provide. Further guidance will be published on the use of CE-file shortly.

Sir Timothy Fancourt, President

18 January 2021