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SENIOR PRESIDENT  
OF TRIBUNALS

# Amended General Pilot Practice Direction: Contingency Arrangements in the First-Tier Tribunal and the Upper Tribunal

## **Background**

1. On 19 March 2020, Sir Ernest Ryder, Senior President of Tribunals, issued a Pilot Practice Direction setting out how the First-tier Tribunal and Upper Tribunal might adjust their ways of working during the Covid-19 pandemic, to limit the spread of the virus and manage their workloads appropriately. On 14 September 2020, that Pilot Practice Direction was amended and extended to 18 March 2021.
2. Having reviewed that amended Pilot Practice Direction, I have decided to extend it to 18 September 2021 and make minor amendments to paragraphs 3, 7A and 10. The full text of the Pilot Practice Direction, as now amended, is set out below. The Pilot Practice Direction may be reviewed again prior to its expiry should it become inappropriate or unnecessary, and may be revoked at any time. The Lord Chancellor has approved the amendments in accordance with s23 Tribunals, Courts and Enforcement Act 2007.

## **Scope**

3. This Practice Direction applies to all appeals, applications and other proceedings in the First-tier Tribunal and the Upper Tribunal, save for paragraph 10, which applies solely to the First-tier Tribunal Property Chamber.

## **Decisions on the papers without a hearing**

4. Where a Chamber's procedure rules allow decisions to be made without a hearing, decisions should usually be made in this way, provided this is in accordance with the overriding objective, the parties' ECHR rights and the Chamber's procedure rules about notice and consent.

## **Triage**

5. In many tribunal jurisdictions, a hearing is required unless a temporary rule inserted into their procedure rules by the Tribunal Procedure (Coronavirus) (Amendment) Rules 2020 applies, or the parties consent to a determination on the papers. To deal more

efficiently with cases in which a hearing would otherwise be required and a successful outcome for the applicant or appellant is highly likely, Chamber Presidents may decide to follow the following scheme to 'triage' appeals and applications for some or all of their jurisdictions where paper determinations are possible with the parties' consent:

- (a) Where the parties have not already consented to a determination without a hearing, the tribunal may assess a case on the papers.
- (b) If the tribunal considers it could decide the matter without a hearing, it will provide a provisional decision to the parties.
- (c) The parties will then be asked whether they consent to the tribunal making a binding decision on the papers that is in the same terms as the provisional decision.
- (d) If one or both of the parties confirm that they require a hearing, a hearing will be listed (which may be conducted remotely).
- (e) If the parties consent to a paper determination (or do not object, if there is a provision in the Chamber's rules that allows for non-objection), the tribunal will issue a final decision in the same form as the provisional decision, unless:
  - (i) it considers that it made an error in relation to the provisional decision; or
  - (ii) the circumstances have materially changed since the provisional decision was made.
- (f) If paragraph 5.(e)(i) or (ii) above applies, the tribunal shall either provide the parties with a revised provisional decision and follow paragraph 5.(c) onwards in respect of the new provisional decision, or list a hearing. In either case, the tribunal will explain to the parties why it decided not to issue the first provisional decision.

### **Hearings**

6A. Paragraphs 6-9 apply where a tribunal decides in a particular case that a hearing is necessary.

### **Remote hearings**

6. Where it is reasonably practicable and in accordance with the overriding objective to hear the case remotely (that is in any way that is not face-to-face, but which complies with the definition of 'hearing' in the relevant Chamber's procedure rules), it should be heard remotely.
7. For the avoidance of doubt, where a tribunal decides that a hearing will take place remotely, references in the Chamber's procedure rules to a 'hearing' will apply to that remote hearing and references in the Chamber's procedure rules to a party's entitlement to attend a hearing shall be such participation as may be directed.

### **Hybrid Hearings**

7A. Where a tribunal decides to conduct a 'hybrid' hearing (i.e. a hearing where there are participants attending the hearing in a physical hearing room and participants attending the same hearing remotely), the places from which participants attend the hearing shall, for the duration of the hearing, be deemed an extension of the hearing room.

### Hearings in a party's absence

8. Where a party fails to attend a hearing without an application made in advance to adjourn or postpone the hearing, and the relevant Chamber's procedure rules allow the tribunal to continue with the proceedings in the party's absence, the hearing may proceed on that basis provided this is in accordance with the overriding objective.
9. Where a party fails to attend a hearing without an application made in advance to adjourn or postpone it, a request by that party to set aside a decision made in their absence will not usually be granted if the decision fully upholds or allows their appeal or application.

### **Inspections**

10. The following arrangements for inspections under the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 will apply:
  - (a) In relation to the inspection of buildings or parcels of land, Tribunals will have the discretion to carry out an inspection of the property that is the subject matter of the dispute between the parties. That discretion will be exercised by a judge or a valuer chair who will take all relevant considerations into account, including:
    - (i) the representations of the parties;
    - (ii) the need for appropriate social distancing; and
    - (iii) whether an inspection is essential to deal with the case fairly and justly and in accordance with the overriding objective.
  - (b) If a judge or a valuer chair directs that an inspection may take place, then the judge or valuer chair may also place conditions on how the inspection shall be conducted, including, where appropriate, a direction that the parties shall not be entitled to accompany the judge /valuer chair or Tribunal members.
  - (c) If an inspection is essential to deal with the case fairly and justly and in accordance with the overriding objective and the judge or valuer chair believes that it cannot be accommodated safely, then
    - (i) Parties may be permitted to produce photographs and/or videos of the condition or other relevant aspects of the property or land; or
    - (ii) The case may be stayed pending the amendment or withdrawal of this Practice Direction.

### **General**

11. Insofar as compatible with the efficient administration of justice, the tribunals will take into account the impact of the Covid-19 pandemic when considering applications for the extension of time for compliance with directions and the postponement of hearings.

**The Rt. Hon. Sir Keith Lindblom**

Senior President of Tribunals

18<sup>th</sup> March 2021