

Coronavirus (COVID-19)—First-tier Tribunal (IAC) appeals

22/04/2020

Immigration analysis: Adam Pipe, barrister of No.8 Chambers, discusses the impact of the coronavirus (COVID-19) pandemic on First-tier Tribunal (IAC) appeals.

References:

[Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and Upper Tribunal](#)

Following the government's response to the coronavirus pandemic the (FTT) (IAC) have ceased face to face hearings. On 19 March 2020 the Senior President of Tribunals published 'Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and Upper Tribunal' which states at paragraph four:

'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.'

Paragraph five suggests that Chamber Presidents adopt a triage scheme to deal more efficiently with, 'cases in which a successful outcome for the applicant or appellant is highly likely'.

References:

[Presidential Practice Statement Note no 1 2020: Arrangements during the COVID-19 pandemic](#)

On 23 March 2020 the President of the FTT (IAC), Mr Michael Clements, issued 'Presidential Practice Statement Note no 1 2020: Arrangements during the COVID-19 pandemic.' The various FTT (IAC) hearing centres are now issuing a fairly standard set of directions which indicate that the hearings will now initially be dealt with by a remote Case Management Review (CMR) hearing with directions requiring a great deal of case preparation in advance of the CMR.

References:

Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, [SI 2014/2604](#)

On 9 April 2020 The Tribunal Procedure (Coronavirus) (Amendment) Rules 2020, [SI 2014/2604](#), were laid before Parliament (coming into force on 10 April 2020) which inter alia temporarily amend the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 to include a new Rule 4A permitting the determination of an appeal without a hearing where three conditions are satisfied where:

- the matter is urgent
- it is not reasonably practicable for there to be a hearing (including a hearing where the proceedings would be conducted wholly or partly as video proceedings or audio proceedings)
- it is in the interests of justice to do so

There is also a new Rule 27(2A) providing additional powers for a hearing to be held in private.

Are there any changes to the way that you now lodge an appeal to the First Tier Tribunal?

References:

[HMCTS webinar](#)

The Presidential Practice Statement indicates at paragraph one, 'With the exception of HR/EEA appeals, all appeals to the First-tier Tribunal must be commenced using the online procedure unless it is not possible to do so.' In practice this means that protection appeals need to be lodged using the online procedure unless it is not possible. If it is not possible to use the online procedure an Appellant must provide reasons and the FTT will consider these and provide directions, 'including directing that the appeal must continue using the

online procedure, be stayed, be determined by a means to be directed having regard to those reasons or be determined without a hearing.' This represents an expansion of the reform project which had been going through a pilot process at various hearing centres. Practitioners would do well to watch the HMCTS webinar on the digital reform process in the FTT (IAC) which was originally posted in November 2019 and explains the online process. Human Rights and EEA appeals are to be lodged in the usual way.

How will new and pending appeals now proceed?

It appears that appeals will be now listed for remote CMR hearings. The directions that are being issued by the Tribunal are requesting that representatives provide contact details, including Skype for Business, to the Tribunal for this to take place. However, my understanding is that currently the Home Office do not have the capacity to use Skype for Business (which itself is being replaced by Microsoft Teams) so it is likely that these hearings will proceed by telephone. These CMRs will take place at a time slot allocated by the Tribunal.

The directions also provide a later date (circa two weeks after the provision of contact details) by which time witness statements, any other evidence relied upon and an Appeal Skeleton Argument (ASA) must be emailed to the Tribunal.

In protection appeals the ASA must be in the form set out in the Digital Pilot Directions, which are also being sent out, containing a Summary of the Appellant's Case, Schedule of Issues and Submissions.

The directions being issued state that within 10 working days of the provision of the ASA the Respondent must provide a response by email and if no response is received within the time limit 'it will be assumed that the Respondent does not take issue with the submissions contained in the ASA.'

A Judge will then consider the ASA and response to determine, having given the parties an opportunity to make written submissions, whether the appeal can be justly determined without a hearing.

Where it is not considered appropriate for a matter to proceed without a hearing consideration will be given to a remote hearing. To that end the directions require certain details to be provided at or before the CMR.

Do you have any concerns about the new arrangements, e.g. that certain appeals should not be heard on the papers; and as to online hearings?

There are a number of significant concerns arising from the directions. The first is the Legal Aid issues, there is currently no provision for counsel to be paid for drafting the ASA where the Home Office withdraw a decision or an appeal is successful without a hearing. I understand that this issue is currently being looked at and hopefully provision for payment will be made very shortly.

I also have concerns in respect of the lack of clarity in the practice directions which are being sent out. For example, the are differing dates provided in the Digital Pilot Directions which accompany the notices which are being sent out.

The directions also cause concern as they require the front loading of appeals in terms of preparation. For example, it may be very difficult to take witness statement remotely with a vulnerable client. The directions also state that no bundle make exceed 50 pages without the consent of the Tribunal which itself is troubling. The directions may also increase costs for privately paying clients introducing a number of additional pieces of work which will need to be done by representatives at an early stage.

Remote hearings are also a concern where cases require live evidence, often through an interpreter. Will a witness have the technology to join remotely? Will evidence be contaminated? Will confidentiality be breached?

Do you have practical tips/suggestions as to best practice/dealing with the new arrangements?

In dialogue between practitioners and the FTT President/Resident Judges it does seem like the Tribunal will be sympathetic where directions cannot be complied with. Practitioners should therefore be proactive in

raising these issues with the Tribunal promptly with reasons. If your client or a witness is vulnerable reference should be made to the vulnerability guidelines.

I also understand that the Home Office are encouraging practitioners to sign up to the Movelt portal for sharing bundles which will assist the parties in sharing data securely.

Practitioners should also be aware that the situation is very fluid and look for the latest changes from HMCTS via their website.