



## Tribunals & COVID-19

### First-tier & Upper Tribunals, and Traffic Commissioners

#### By Adam Heppinstall

**Much has been said in relation to the steps being taken to keep the criminal and civil courts going, but what's going on in the First-tier and Upper Tribunals, as well as before the Traffic Commissioners?**

#### Rule Changes

1. All of the Chambers of the FTT and the UT have new rules brought into force under the powers set out in the Coronavirus Act 2020: The Tribunal Procedure (Coronavirus) (Amendment) Rules 2020<sup>1</sup>.
2. These changes allow decisions to be made without a hearing where the matter is urgent, for the media/public to be excluded where including them is not practicable and for the recording of remote hearings where this was previously prohibited.
3. For example the GRC (the General Regulatory Chamber) which amongst other things, hears information rights (GDPR/FOIA/EIR) appeals now has the power to make a decision which disposes of proceedings without a hearing where the matter is urgent, where it is not reasonably practicable

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<sup>1</sup> <http://www.legislation.gov.uk/uksi/2020/416/article/5/made>

for there to be a hearing (including an audio or video hearing) and where it is in the interests of justice to proceed in that manner.

### **Reducing Panel Membership**

4. Many Chambers sit with lay or non-legally qualified members. Salaried judges have been empowered to decide that the usual rules on panel composition can be varied during the COVID-19 crisis<sup>2</sup>. For example, the Judge may hear a matter him or herself sitting alone, or may only sit with one member, rather than the usual two (for example, there are usually two lay members in an information rights appeal).
5. The Senior President has also authorized the follow exceptional procedure:

*If the composition arrangements for a case are altered from what they would have been under the Standard Composition Arrangements, the tribunal may seek the advice of one or more nonlegal members to assist with its decision-making, provided the advice is recorded and disclosed to the parties*

6. Parties will have to monitor the use of this provision very carefully, because a member who did not hear evidence or submissions would need to proceed very carefully before giving such advice to those members of the Tribunal who did hear the case.

### **The General Regulatory Chamber (GRC)**

7. All face to face hearings are postponed until the end of June 2020. The Tribunal will determine appeals on the papers where the parties' consent

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<sup>2</sup> <https://www.judiciary.uk/wp-content/uploads/2020/03/General-Panel-Composition-Pilot-Final-for-Publication-1.pdf>

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and in accordance with the new rule mentioned above. They are also arranging Skype hearings<sup>3</sup>.

8. A Pilot Fast Track Protocol for some appeals has been instituted<sup>4</sup>, this covers priority appeals including those against Information Notices under FOIA, DPA or EIR, but due to the Information Commissioner's Office (ICO) being closed, the GRC Chamber President has stayed all information rights appeals for 28 days from 1 April 2020, but no doubt this will be reviewed<sup>5</sup>.

### The Property Chamber

9. All face to face hearings have been postponed to the end of May 2020 and case management is being conducted on paper, by telephone and by video with the Chamber considering making final determinations on the papers or via telephone or video hearings<sup>6</sup>.

10. There are separate procedures of urgent applications such as for

*the appointment of a manager; urgent applications for special interim management orders; appeals against emergency prohibition orders; appeals against emergency improvement notice and urgent applications for the dispensation of consultation.*

11. Inspections of properties by Tribunal members have been suspended<sup>7</sup>:

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<sup>3</sup> [https://www.judiciary.uk/wp-content/uploads/2020/04/14-Apr-20-General-Regulatory-Chamber-First-Tier-Tribunal-Help-for-Users.pdf?utm\\_medium=email&utm\\_source=](https://www.judiciary.uk/wp-content/uploads/2020/04/14-Apr-20-General-Regulatory-Chamber-First-Tier-Tribunal-Help-for-Users.pdf?utm_medium=email&utm_source=)

<sup>4</sup> [https://www.judiciary.uk/wp-content/uploads/2020/03/2020\\_03\\_23\\_General-Regulatory-Chamber-Chamber-Presidents-Guidance-on-Ways-of-Working-during-Coronavirus-Out-1.pdf](https://www.judiciary.uk/wp-content/uploads/2020/03/2020_03_23_General-Regulatory-Chamber-Chamber-Presidents-Guidance-on-Ways-of-Working-during-Coronavirus-Out-1.pdf)

<sup>5</sup> [https://www.judiciary.uk/wp-content/uploads/2020/04/01-Apr-20\\_SPT\\_GRCinfo-rights-Directions-for-a-General-Stay.pdf](https://www.judiciary.uk/wp-content/uploads/2020/04/01-Apr-20_SPT_GRCinfo-rights-Directions-for-a-General-Stay.pdf)

<sup>6</sup> <https://www.judiciary.uk/wp-content/uploads/2020/04/14-Apr-20-Property-Chamber-First-Tier-Tribunal-Help-for-Users.pdf>

<sup>7</sup> <https://www.judiciary.uk/wp-content/uploads/2020/03/General-Pilot-Practice-Direction-Final-For-Publication-CORRECTED-23032020.pdf>

*Inspections of properties and land under the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 are suspended with immediate effect. To mitigate the impact of the suspension, the Tribunal may consider the following: (a) Parties may be permitted to produce photographs and/or videos of the condition or other relevant aspects of the property or land; (b) External “drive by” inspections by Tribunals may be permitted in appropriate cases; 11. If an inspection is essential to deal with the case fairly and justly and in accordance with the overriding objective then the case should be stayed pending the amendment or withdrawal of this Practice Direction.*

### **Lands Chamber of the Upper Tribunal**

12. Special Presidential Guidance has been issued<sup>8</sup> The Chamber has been making good use of its powers to make written determinations, to hold hearings by Skype or by phone, and is hoping to avoid many postponements. It has said that postponements are likely in these cases:

*Those involving a large number of witnesses and significant disputes of fact or valuation opinion which in normal circumstances would be determined at a hearing with oral evidence and cross examination may not be practical. Cases involving multiple parties or objectors, or where some or all parties are not professionally represented may give rise to similar issues. The hearing of such cases may need to be postponed. No case will be postponed indefinitely and when a direction is given to postpone a listed hearing the Tribunal will either fix a new hearing date or will fix a date, three or four months in the future, when it will undertake a review to determine whether the matter can now safely be re-listed.*

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<sup>8</sup> [https://www.judiciary.uk/wp-content/uploads/2020/03/2020\\_03\\_24\\_-UT-Lands-Chamber-Covid-19-Presidential-Guidance-final\\_.pdf](https://www.judiciary.uk/wp-content/uploads/2020/03/2020_03_24_-UT-Lands-Chamber-Covid-19-Presidential-Guidance-final_.pdf)

### **Administrative Appeals Chambers of the Upper Tribunal**

13. The AAC is trying its best to keep going, deciding matters on the paper or via Skype where possible. It will also continue to decide applications for permission to appeal, prioritising cases where time is of the essence, such as in benefit appeals<sup>9</sup>.
14. All appeals were stayed for 21 days from 25 March and all time limits for making appeals and applications to the Chamber were extended accordingly<sup>10</sup>.

### **Traffic Commissioners**

15. The Senior Traffic Commissioner has issued a detailed document<sup>11</sup> setting out emergency provisions for several matters, including hearings and Traffic Commissioners are only likely to seek hearings in the following types of cases:
- *any serious concerns regarding the safety of the transport operation;*
  - *application for interim authority or PSV application (where interim authority is not available);*
  - *application by an Administrator to continue operation;*
  - *cases of serious non-compliance*

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<sup>9</sup> [https://www.judiciary.uk/wp-content/uploads/2020/04/14-Apr-20-Administrative-Appeals-Chamber\\_Help-for-Users.pdf?utm\\_medium=email&utm\\_source=](https://www.judiciary.uk/wp-content/uploads/2020/04/14-Apr-20-Administrative-Appeals-Chamber_Help-for-Users.pdf?utm_medium=email&utm_source=)

<sup>10</sup> <https://www.judiciary.uk/wp-content/uploads/2020/03/UTAAC-General-extension-stay-and-directions-25-March-2020.pdf>

<sup>11</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/873232/st-at-doc-contingency-planning.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/873232/st-at-doc-contingency-planning.pdf)

The Upper Tribunal has said it will prioritise applications to stay Traffic Commissioner decisions (which are often necessary in order for businesses to remain in operation pending appeal).

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20 April 2020