

### ***First Tier Tribunal, Property Chamber & Upper Tribunal (Lands Chamber)***

The Property Chambers have been quick to react to the current crisis. As noted previously on this page the First-tier Tribunal immediately undertook a review all of cases listed for hearing or mediation in the four-week period from 23rd March 2020 to establish whether cases should proceed or be postponed for a paper determination or re-listing. Postponements were duly given in the vast majority of cases, with letters being sent out almost immediately in each case. All hearings in Residential Property cases were then postponed until after 29 May 2020, with all directions suspended until after the same date.

On 26 March 2020 the Senior President of Tribunals issued a [Practice Direction](#) enabling all new applications and appeals to be lodged with the Tribunal by email, and providing that all correspondence and case management documentation for current and new applications should be lodge with the Tribunal by email (dispensing with the need for any further consent from the Tribunal under Rule 16(1)(c) of its Procedural Rules. The PD also allows applications to be made to any office of the FtT until further notice. As regards the payment of application and hearing fees, further to assist users the Tribunal is presently allowing a deferred period for payment pursuant to Rule 8.

On 2 April 2020, acknowledging again the need to adapt its practices and procedures to limit the spread of Covid-19 and enable the tribunals to manage their workload appropriately, a [Pilot Practice Direction](#) covering all applications and appeals in the FtT and the Upper Tribunal was promulgated [LINK] to facilitate remote audio and video hearings.

Paragraph 4 of the Pilot PD provides that where a tribunal decides that (a) a hearing in a particular case should take place (b) the proceedings are to be conducted wholly as video or audio proceedings, and (c) it is not practicable for the hearing to be broadcast in a court or tribunal building, the tribunal may direct that the hearing will take place in private, where this is necessary to secure the proper administration of justice. However, paragraph 5 adds that where a media representative is ‘able to access proceedings remotely while those proceedings are taking place, the proceedings will constitute a public hearing for the purpose of the relevant Chamber’s procedure rules.’

The mere ability to access the hearing, as is readily the case using Zoom, appears therefore to be sufficient to constitute a private hearing a public hearing under the current constraints. Nonetheless, any hearing held pursuant to paragraph 4 must be recorded and on the application of any person, and with the Tribunal’s consent, any recording may be accessed at a tribunal or court building. Where authorised under s.32 of the Crimes and Courts Act 2013 or s.29ZA of the Tribunals, Courts and Enforcement Act 2007 (as inserted by the Coronavirus Act 2020) the tribunal may direct the hearing be a video hearing, but otherwise it will be audio recorded.

These Practice Directions have now been augmented by [The Tribunal Procedure \(Coronavirus\) \(Amendment\) Rules 2020](#), made on 8 April 2020, laid before Parliament on 9 April 2020 and in force from 10 April 2020 until the day that, and immediately after, section 55(b) (public participation in proceedings conducted by video or audio) of the Coronavirus Act 2020 expires for all purposes (presently 30 June 2020).

These Rules amend the Upper Tribunal (Lands Chamber) Rules to insert provisions enabling the UT to direct that a hearing be held in private (by video or audio proceedings) and to be recorded, if it is not practicable for non-parties or the media to attend and to do so is ‘necessary to secure the proper administration of justice.’ The new Rules also amend the FtT Property Chamber Rules to insert ‘Coronavirus temporary rules’ permitting decisions without a hearing where the requisite conditions are met and providing also for hearings to be (audio or video)

recorded, if practicable. Were the conditions for decisions without a hearing are (a) the matter is urgent (b) it is not reasonably practicable for there to be a hearing (including a hearing wholly or partly as video or audio proceedings) and (c) it is in the interests of justice to do so. Clearly, in each case a relatively broad discretion is given to the tribunal in terms of proper administration or the interests of justice, and it will be interesting to note how this is exercised in the multi-various circumstances that will inevitably arise.

Most recently on 15 April 2020 the FtT (Property Chamber) has issued a helpful [status report](#) relating to each of its 3 jurisdictions (Residential, Land Registration and ALD). Notably, this confirms that, notwithstanding all of the above, for those cases which can only be decided following traditional face-to-face hearings, these will not be listed until it is safe to do so following the Corvid-19 pandemic. Similarly, this Chamber has confirmed it will not be carrying out inspections of properties for at least 6 months.

Meantime, one interesting expedient already deployed by the Southern FtT is to propose a preliminary decision on paper, with the parties having the opportunity if either or both dissent to renew their application for a hearing, in whatever form. A novel procedure, which like so much of the present new regulation remains to be tested.