

Dear Ms Lenegan,

I have been asked to respond through you to the letter of 27 March 2020 from the chambers listed as signatories or supporters and the supporting letter of 31 March from a further such list. I will respond to the concerns raised in the order in which they appear.

### Funding

I want to assure you that I completely understand your concerns and in particular for the junior bar. I am aware that the legal aid contract, as currently drafted, provides for some challenges as to how fees are to be divided between the bar and those instructing them. You will know from other correspondence that the Lord Chancellor's Department is also fully aware of your concerns and that consideration is being given at the highest levels to ways in which the current scheme can be adapted to fit the new ways of working now required. We understand the concerns about legal aid but decisions about the future of the scheme are for others and not the IAC judiciary.

Whilst your letter under this heading focuses on funding, the reasons for which I understand, my focus both more generally and in these unprecedented circumstances has had to be on the efficient delivery of justice within this jurisdiction. Swift action has been required to avoid the IAC being left with cases listed, hearing centres closed and inadequate means for appellants and their representatives to know that they would not have access to our buildings. I have had to make clear decisions in a landscape which changes day by day.

### Lack of clarity as to the applicable Practice Directions

You refer to the Notice and Directions that has been sent out to all parties in all listed cases that have been adjourned. The Directions require bundles and skeleton arguments to be filed electronically so that meaningful triaging and active case management can take place, essential steps if we are to maintain access to justice and the proper functioning of the tribunal. It is intended that the same process will apply at each hearing centre, consistent with the approach in Reform. Where a hearing is necessary, it will proceed by remote means, in accordance with what the LCJ and the SPT have described as the "default position".

The directions provide for applications by either party where there are difficulties with compliance within the timescales, but it is expected that parties will comply with them. As

is currently the case where there is default without explanation or good reason, appeals might be decided without a hearing but we expect that this will be so in a very small number of cases. The constructive stance taken in your letter suggests, as we would expect, that there will be a positive engagement with the directions and the case management that will follow.

As to your concern that the tribunal is now requiring a skeleton argument in all cases, I would observe that best practice has always required a skeleton and experience in the CCD pilot is that an early and focussed presentation of the appellant's case, followed by an effective review by the respondent, can produce a constructive settlement.

#### Hearings which require live evidence

You are right to point to the challenge which remote hearings pose. Some other jurisdictions are already working very well with remote hearings and you will know that many of our bail applications are conducted in this way. Applications for bail are being treated as a priority and ways of working remotely have been developed over the past week and a half to ensure that all applications are listed promptly. Increasing use of telephone hearings has proved very successful.

HMCTS is working hard to provide the environment in which we can meet this challenge but you are right to observe that much more needs to be done. This is why I took the decision to vacate lists, take stock, establish a sound footing for case management to meet the impact of the pandemic, triage cases where we can and then list those cases to be decided by means of a remote hearing with those not suitable being adjourned to a time when face to face hearings again become possible.

#### Access to the Public

You are right to raise this concern. It is a fundamental principle of justice that it should be open. In deciding how best to proceed I have borne in mind clear guidance from the LCJ. The media and members of the public will be able to attend hearings in person, if safe to do so in the light of Public Health England or Health Protect Scotland guidance, to give expression to the principle of open justice. Where this is not possible, judicial consideration will be given to them joining a hearing remotely or being provided with a transcript or authorised record of the proceedings afterwards.

The current Covid 19 crisis is unprecedented and a situation none of us could have foreseen. It requires significant changes to our lives generally and to the way that we work. The Tribunal's first priority is and will remain the safety of all users, staff and the judiciary. While currently closed to the public, hearing centres are operating with a skeleton staff who are practising social distancing. Many are working from home. The leadership judges have put a great deal of thought into identifying ways in which appeals can be heard and decided safely and the work of the Tribunal continued during the pandemic and thereafter.

Yours sincerely,

Michael Clements

1.4.20