



Practice Statement

COVID-19 Virus Emergency Variation of Practice

1. The VTE will be adapting its practices for hearing cases in this COVID-19 environment for the foreseeable future as it is currently impossible to carry out face-to-face hearings safely. The approach will be guided by the interests of justice and the overriding objective to determine outstanding cases as effectively and fairly as we can.
2. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 paragraph (5) (arrangement for appeals) and paragraph (6)(3)(e) (appeal management powers) the VTE may determine the form of any hearing.
3. Therefore, in pursuance of Regulation (6)(3)(g) the VTE shall incorporate “remote hearings” as part of that definition and for the time being as the default option until it is safe to return to normal working. The definition of “hearing” will now include the use of Microsoft Teams video conferencing application, or any video platform compatible with the VTS infrastructure, telephone, or a combination of the two. A flexible approach is to be followed at all times.
4. Where possible, and with the agreement of the parties, we will continue to conduct cases by way of written submissions and deal with them on the papers under Regulation 29, however, where that is not possible we will resort to video, telephone, or a combination of the two to conduct remote hearings.
5. The VTE expectation therefore is that the default position during this crisis will be that where a hearing of any sort is needed, that hearing will be remote, that is to say by video conference or telephone (there may be rare exceptions, see below for further details). This follows the practice across the tribunal world and follows the advice given in the Senior President’s Practice Direction of the 19 March 2020. There is also helpful guidance available from the Judicial College to assist, please see the link below.

<https://www.judiciary.uk/wp-content/uploads/2020/03/Good-Practice-for-Remote-Hearings-May-2020-1.pdf>
6. In directing a remote hearing in any case, the VTE will follow the approach of the High Court in ***Municipio de Mariana & Ors v BHP Group plc [2020] EWHC 928***

(TCC) - in which HH Judge Eyre QC identified the relevant principles at [24] as follows:

i) Regard must be had to the importance of the continued administration of justice. Justice delayed is justice denied even when the delay results from a response to the currently prevailing circumstances.

ii) There is to be a recognition of the extent to which disputes can in fact be resolved fairly by way of remote hearings.

iii) The courts must be prepared to hold remote hearings in circumstances where such a move would have been inconceivable only a matter of weeks ago.

iv) There is to be rigorous examination of the possibility of a remote hearing and of the ways in which such a hearing could be achieved consistent with justice before the court should accept that a just determination cannot be achieved in such a hearing.

v) Inevitably the question of whether there can be a fair resolution is possible by way of a remote hearing will be case-specific. A multiplicity of factors will come into play and the issue of whether and if so to what extent live evidence and cross-examination will be necessary is likely to be important in many cases. There will be cases where the court cannot be satisfied that a fair resolution can be achieved by way of a remote hearing.

The full case can be found at: www.bailii.org/ew/cases/EWHC/TCC/2020/928.html

A protocol for the day to day conduct of the remote hearing is available.

Public Access

7. The general rule is that “all hearings must be held in public” (Regulation 31(1), Procedure Regulations) unless there is an exceptional reason to depart from that practice. The VTE can hold hearings in private when the need arises and in particular when there may be a public health issue or danger to health (see CPS 12 (2)(e)). However, it should be rare that the public need to be excluded in the context of remote hearings as there are technical solutions to afford access. The Tribunal in dealing with cases in line with the overriding objective will hold its proceedings in public unless there is an exceptional reason not to do so.
8. The issue of maintaining public access will be achieved by advertising on the VTS website the listing arrangements and how anyone interested will be able to dial in and listen or watch the proceedings: they will not be able to take part in the proceedings other than by being present.

Case Management

9. All parties will still be able to request the case is determined on the papers under Regulation 29 rather than an oral hearing if they prefer that option. However, this will require the agreement of the other party.

10. A remote oral hearing will be convened using either Microsoft Teams or another video platform supported by the VTS. Both of these formats are "hearings" within the definition of that term of our practice which is amended in light of current circumstances. It will be for the VTE to determine the exact format of the hearing following the guidance in *Municipio de Mariana & Ors v BHP Group plc*, every effort will be made to accommodate the parties needs consistent with the overriding objective and the interests of justice.
11. You can find out more about how to join telephone and video hearings on the VTS website or the VTE members pages.
12. There may be a good reason for a party asking the Tribunal to depart from its default position and convene a face-to-face hearing, for example where that party or a witness requires reasonable adjustments. In any case where a face-to-face hearing is requested, we will arrange a telephone case management hearing to discuss the reasons for the request. There is always a possibility that we are unable to accommodate the request, in which circumstances such cases may not be able to be progressed promptly.
13. Any application will be considered by the President or Registrar who will apply the overriding objective of fairness and justice in considering how best to move forward, recognising that listing a face-to-face hearing is likely to result in a severe delay to that appeal being decided.
14. This Practice Statement comes into force immediately, it may be cited as the COVID-19 Variation of Practice Statement 29 July 2020 and will be reviewed in light of prevailing circumstances regularly.

Gary Garland
President

29 July 2020