



Additional Support Needs

**GUIDANCE TO TRIBUNAL MEMBERS NO 01/2020**

**HEARINGS AND THE COVID 19 OUTBREAK**

*Purpose of this Guidance*

1. This guidance has been issued in order to assist tribunal members (a) to decide whether it is necessary to hold a hearing during the period of the COVID 19 outbreak and; (b) on how to conduct remote hearings during the period of the COVID 19 outbreak where cases are deemed to be time-critical.

*Applicability*

2. This guidance is temporary and applies from the date of its issue until the President announces that it no longer applies.

*Test for holding a hearing*

3. During the period of application of this guidance, a hearing in any reference or claim will not take place unless the legal member allocated to the case (following consultation with the President or any legal member nominated by the President) determines (a) that the reference or claim is time critical; and (b) that a hearing is necessary for its resolution.

*Meaning of 'time critical'*

4. For the purposes of this guidance, references to cases being 'time critical' means that one or both parties will suffer substantial prejudice in the event of the hearing being delayed due to a decision taken under paragraph 3 above that a hearing should not take place in the ordinary course of the case.

*Remote hearings*

5. Where, under paragraph 4 above, the legal member allocated to the case decides that the reference or claim is time critical, any hearing must proceed remotely. A remote hearing is one where there is no physical contact between any of the hearing participants (including the tribunal members) for the purpose of holding the hearing or considering or preparing the tribunal's decision.

*Remote hearing methods*

6. Where a remote hearing under paragraph 5 above is to take place, all evidence and submissions will be taken over a secure audio or audio/visual link made available by the administration.

7. Where a remote hearing is to take place, the legal member should, in preparation for the hearing, take all possible steps to minimise the need for oral evidence to be taken and the time employed in taking such evidence, while complying fully with the overriding objective in rule 2 of The First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 ('the rules').
8. Steps which should be considered in all such cases include (but are not limited to): written witness statements to replace oral evidence (in whole or in part); joint minutes of agreed facts; written submissions; tribunal members leading the questioning of witnesses. Tribunal members are directed to the wide powers on how to regulate proceedings in the rules, rules 25/71 (on directions, and in particular rules 25(1)(f) and 71(1)(f)) and rules 50/96 (on power to regulate procedure).

**May Dunsmuir**  
**President**  
**March 2020**