

# PENSIONS APPEAL TRIBUNAL (NORTHERN IRELAND)

## REMOTE HEARING PROTOCOL JUNE 2020

### 1. Background

- 1.1. The impact of the Covid-19 pandemic and associated public health measures have been profound. Courts and Tribunals in Northern Ireland have had to adapt from traditional hearing formats that involve the attendance of participants in person to “remote hearings” where most if not all participants use live video or telephone links to participate in hearings without the need to physically attend the Court or Tribunal in person. Remote hearings may remain the default format of hearing for some time.
- 1.2. Live video and telephone links have been used for a number of years in the Pensions Appeal Tribunal for Northern Ireland (“PAT”) to accommodate representatives who are outside Northern Ireland, so panel members and representatives may already have some experience of this technology in the setting of a formal hearing. However, this will have been in circumstances where only one person has participated remotely and all others have been present in person at the Tribunal. The use of live video or telephone links by all participants presents challenges and issues that are unlikely to have been encountered previously. This protocol seeks to identify those challenges and issues and offer guidance on best practice.
- 1.3. This protocol should be read in conjunction with all relevant Practice Directions and legislation. It is subject to review, amendment or revocation at any time.

### 2. Overriding objective

- 2.1 The overriding objective of this protocol is to ensure that where remote hearings are used, the proceedings of the PAT remain just, fair and lawful. A correct decision in respect of an appeal is the aim of any PAT hearing, but the process employed for the hearing itself is just as significant.

### 3. Technological issues

- 3.1 There are different options for participation in a PAT remote hearing. On the day of hearing the clerk of the Tribunal is responsible for the management of technology within the Tribunal room.
- 3.2 At present the Northern Ireland Courts and Tribunal Services (“NICTS”) use secure video conferencing software called “SightLink” to conduct remote hearings. SightLink allows participation by live video link and works with a range of devices (computers, tablets, smartphones, etc.). Participants can also use a telephone to access SightLink and participate in that way (i.e. with audio only). Panel members and representatives

will use SightLink for remote hearings. It is open to the Chairperson to attend the Tribunal in person to conduct remote hearings and in those circumstances a SightLink screen will be provided for their use within the Tribunal room by NICTS.

- 3.3 Given the reliance being placed on technology for hearings, it is essential that equipment of sufficient quality is used by participants. Microphones, cameras, internet and phone connections must function adequately. Electronic devices must be charged or preferably connected to an operational power supply. The use of headphones is recommended for those participating via SightLink to improve the quality of communication.

#### **4. Before a hearing commences**

- 4.1 The manner of participation for panel members, representatives and Appellants will be determined in advance of the day of hearing. Those using SightLink will be issued with a guidance document by the clerk of the Tribunal in advance of the day of hearing that will provide detail on compatible devices and how to log on.
- 4.2 A prior test of the system to be used should be arranged for those who have not participated remotely previously. The same equipment used during a successful test should then be used on the day of hearing.
- 4.3 Representatives will appreciate that all preparation, consultations and taking of instructions will have to be attended to in advance of the hearing as there will be no opportunity to consult in person outside the Tribunal room.
- 4.4 If any issue affecting the readiness of an appeal to proceed arises then a representative should notify the Tribunal as soon as possible to assist in effective case management and planning.
- 4.5 If possible, representatives should also advise the Tribunal in advance of any particular needs or difficulties an Appellant has which may not be apparent from the papers but could be relevant to the conduct of a remote hearing (e.g. hearing problems, mental health issues or literacy difficulties).
- 4.6 On the day of hearing, if there is any delay in reaching a particular appeal then the Appellant must be notified by their representative or the clerk of the Tribunal and kept informed as to when their appeal will be heard.
- 4.7 Panel members, representatives and Appellants should be alert to the possibility that a particular appeal may not be suited to a remote hearing format. This could be due to matters in relation to the Appellant, the substance of the appeal or some other issue or combination of issues. There is no general rule and it is not possible to be prescriptive – the position in respect of each case will depend on its own particular circumstances.

- 4.8 Participants should ensure that they connect via their settled technological method promptly at the time required.
- 4.9 Once all parties are connected and prior to the hearing commencing, the Chairperson should consider dealing with any of the following issues as appear relevant in addition to usual preliminaries:
- i. Ensuring all participants are able to see and/or hear each other clearly,
  - ii. Ensuring all participants understand the format of the hearing and the manner in which other participants are appearing,
  - iii. Explaining the potential for technical issues to arise without warning (e.g. loss of connection or of video/audio) and what will happen if this occurs,
  - iv. Ensuring all participants are content to proceed with the hearing in the format being employed and, if not, exploring any perceived difficulties to determine if there are fair and just solutions that would permit the matter to proceed,
  - v. Establishing any particular needs of any participant that need to be taken into account for the conduct of the hearing,
  - vi. Establishing so far as is possible that there are no unidentified issues that might impede a remote hearing (e.g. the presence of other persons with the Appellant that might restrict what the Appellant says or other distractions such as childcare commitments or pets),
  - vii. Explaining the procedure for the hearing and encouraging participants to draw to the Chairperson's attention any difficulties that arise as the hearing progresses (e.g. loss of video/audio, a requirement for a break, etc.),
  - viii. Explaining the need for turn-taking throughout the hearing and that whilst participants should not be afraid to draw difficulties to the Chairperson's attention, generally participants should only speak when invited to do so by the Chairperson,
  - ix. Explaining the extent of the Statement of Case papers in the panel's possession and highlighting the practical impossibility of receiving further papers in the course of the remote hearing. If a participant wishes to rely on further papers then they should explain to the panel the relevance of the material. The possibility of the material being sent to the clerk of the Tribunal on conclusion of the remote hearing can be explored, but if the panel wishes to have sight of the material then this will have implications for a decision on the appeal being taken on the day of the hearing.

## **5. During a hearing**

- 5.1 So far as is possible a hearing will follow a procedural format similar to that employed in a hearing where participants appear in person.
- 5.2 Participants using SightLink should generally employ the "mute" function when not speaking. Things that would not be an issue in the Tribunal room (such as the shuffling of paperwork or typing on a keyboard) can be amplified and create distracting background noise in a remote hearing. Furthermore the muting of

participants who are not speaking reduces bandwidth usage and helps maintain the quality of the connection.


- 5.3 Participants should follow the directions of the Chairperson throughout the hearing and in particular as to when they are invited to speak, but should bring any difficulties (such as loss of video or audio) to the panel's attention if they are able to do so.
- 5.4 When referring to a document, participants should use the page numbers in the Statement of Case to direct the other participants to the document.
- 5.5 The Chairperson will monitor the hearing as it progresses, being alert so far as is possible to the possibility that participants have been disconnected or have encountered some difficulty.
- 5.6 The Chairperson will remain alert to the possibility that issues might arise during the course of a hearing which may suggest that the question of the suitability of a remote hearing for the appeal should be reviewed. Participants are also at liberty to draw such issues to the attention of the panel.
- 5.7 When it is necessary for the panel to privately deliberate this will be accommodated either by disabling the audio/video functions of other participants or by disconnecting them altogether until the deliberations have concluded. Once deliberations have concluded the clerk of the Tribunal will make contact with the participants to re-establish the connection.

## **6. After a hearing**

- 6.1 When a hearing has concluded and prior to the panel privately deliberating the Chairperson will ensure that all participants are content with the format that the hearing took and will confirm that the participants were able to address the Tribunal on all issues they considered relevant to the appeal.
- 6.2 The Chairperson will deliver the ruling of the panel and any concluding comments that they consider necessary. All participants (with the exception of the panel members) can then be disconnected. Representatives can use any time available at this point to make contact with the Appellant and discuss the outcome of their appeal or to make contact with Appellants they represent whose cases remain to be heard that day, but the time slots fixed for each case will be maintained unless the Chairperson directs otherwise.
- 6.3 Decisions of the panel will issue in writing as normal. The format of the hearing and the manner in which participants appeared will be recorded in the decision documents.

7. General issues

- 7.1 All participants should be alert to the adjustments and challenges other participants may be experiencing whilst using technology and devices they may have little experience of. A patient and collaborative approach to remote hearings is encouraged.
- 7.2 Remote hearings often take longer than a hearing in person would. All participants need to be alert to this as and allocate time as required. The use of video and audio links to conduct court business can also require high degrees of concentration so the need for taking regular breaks should be considered.
- 7.3 If an appeal is not able to proceed then efforts should be made to identify and resolve as many outstanding issues as possible to ensure the case is ready to proceed when it is relisted. Appeals which cannot proceed for lack of time will be given priority for relisting.

A handwritten signature in black ink, appearing to read "Kenneth McCallum", is centered on a light grey rectangular background.

**PRESIDENT PENSIONS APPEAL TRIBUNALS (NORTHERN IRELAND)**

**JUNE 2020**