

19 March 2020

Dear Ms Pinto QC,

We write to you in your capacity as Chair of the Bar. We are members of the Immigration Bar.

We are becoming increasingly concerned about the complete lack of guidance regarding hearings in the First-tier Tribunal and Upper Tribunal (Immigration and Asylum Chamber) in the wake of the current COVID-19 pandemic. You may be aware that in the Immigration context, most of the junior work is in the First-tier Tribunal and the Upper Tribunal. Court buildings are very busy and listings are not staggered (appellants arrive for a 10AM listing and wait until they are called). In our jurisdiction, more so than others, court users can be particularly vulnerable. They can have mental health issues, capacity issues and many require interpreters for court hearings. They are more likely not to understand government health advice. They are often extremely anxious about court hearings and will want to get things done, even if it means coming to court when they are elderly, immune-compromised, or unwell.

We note that there is guidance in other jurisdictions - the President of the Family Division has today issued guidance<sup>1</sup>, and the President of the Employment Tribunal has issued guidance as well<sup>2</sup>. The guidance includes provisions for remote hearings. We are also aware that the Lord Chief Justice has said that the default position should be remote hearings in civil and family courts<sup>3</sup>. In the Immigration context this may be possible in case management review hearings and some bail hearings. We also recognize that this approach would be unsuitable where oral evidence is required. We are hindered by the complete lack of guidance.

We were pleased to see the following confirmation in the correspondence from the Bar Council publicised yesterday:

*"the BSB has now confirmed that if a member of the Bar decides that, in line with government advice, the risk to their own health or to those close to them or to others at court, warrants not attending court, they will not be in breach of the Handbook".*

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<sup>1</sup> [https://mcusercontent.com/2750134472ba930f1bc0fddcd/files/f420a1c4-a392-4ec1-ae98-fde462384955/President\\_guidance.pdf](https://mcusercontent.com/2750134472ba930f1bc0fddcd/files/f420a1c4-a392-4ec1-ae98-fde462384955/President_guidance.pdf)

<sup>2</sup> [https://www.judiciary.uk/wp-content/uploads/2015/03/Presidential-Guidance-ET-Covid19.pdf?mc\\_cid=642db77d9d&mc\\_eid=c029591e05](https://www.judiciary.uk/wp-content/uploads/2015/03/Presidential-Guidance-ET-Covid19.pdf?mc_cid=642db77d9d&mc_eid=c029591e05)

<sup>3</sup> <https://www.civillitigationbrief.com/2020/03/19/update-on-covid-19-and-the-courts-guidance-from-the-lord-chief-justice/>

However, there remains confusion, as both tiers of the IAC continue to sit with no additional measures being taken to ensure the safety of all court users and staff. Some representatives continue to feel that it is their duty to “soldier on” and to continue going to court whilst the tribunals remain open.

Whilst some tribunal judges and representatives are self-isolating, not all are. In the absence of any guidance in this jurisdiction, barristers are continuing to attend hearings and hearings are proceeding, even when they are not urgent. We have witnessed and had direct reports of: tribunal cleaners self-isolating/going on strike, packed float lists requiring people to wait in crowded waiting rooms, busy court lists with no attempt to stagger listings, bundles being handed in and taken back, poor sanitary conditions, and a lack of hand washing facilities or antibacterial gel being made available. This means that judges, vulnerable clients, interpreters, court staff and security staff are all being placed at risk not just in the court buildings but also on the way to court.

We are extremely concerned that the system of immigration control is being prioritised over public health. The rule of law and access to justice does not require advocates to put their own health at risk and those of others around them.

Whilst writing this, we have become aware that all hearings in the Upper Tribunal are being de-listed as from Monday 23 March 2020, but there is no such uniformity of approach in the First-tier Tribunal. We take the view that anxious appellants require certainty and the ongoing uncertainty is particularly damaging for this client group.

We urge you/the Bar Council to seek:

1. Urgent guidance from the Presidents of the Immigration and Asylum Chamber on COVID-19; and
2. Clarity on what the IAC’s position is. To dispense justice, all tribunals must be safe. Therefore, we seek specific assurances about all steps being taken to protect all tribunal users from the moment they enter the tribunal premises to the moment they leave, including a clear indication of all screening which is being conducted of all tribunal users to ensure that: (i) they are not at risk of being carriers of the virus; and (ii) they are not potentially vulnerable, or carers for potentially vulnerable people.

Yours sincerely,

**Garden Court Chambers**

Laurie Fransman QC (Call 1979, Silk 2000)

Stephanie Harrison QC (Call 1991, Silk 2013)

Sonali Naik QC (Call 1991, Silk 2018)

Ronan Toal (Call 1999)

Ubah Dirie (Call 2014)

Taimour Lay (Call 2011)

Maha Sardar (Call 2002)

Greg Ó Ceallaigh (Call 2006)

Helen Foot (Call 2008)

Nicola Braganza (Call 1992)

Camila Zapata Besso (Call 2016)

Navida Quadi (Call 2018)

Emma Fitzsimons (Call 2011)

Stephen Clark (Call 2013)

Laura Profumo (Call 2016)

Ali Bandegani (Call 2009)

Valerie Easty (Call 1992)

Ella Gunn (Call 2018)

Gráinne Mellon (Call 2010)

Patrick Lewis (Call 1997)

Steven Galliver-Andrew (Call 2018)

Louise Hooper (Call 1997)

Sadat Sayeed (Call 2001)

### **One Pump Court**

Asma Nizami (Call 2009)

Harriet Short (Call 2007)

Raggi Kotak (Call 2000)

Stephen Knight (Call 2011)

Ahmed Osman (Call 2015)

Angelina Nicolaou (Call 2015)

Michelle Harris (Call 2000)

Mark Allison (Call 2016)

Victoria Laughton (Call 1998)

Alex Burrett (Call 1999)

### **Goldsmith Chambers**

Sangeetha Iengar (Call 2009)

Charlotte Bayati (Call 1995)

Shiraz Bhanji (Call 1979)

Catherine Jaquiss (Call 2014)

Bronwen Jones (Call 2009)

Sanaz Saifolahi (Call 2000)

Frances Allen (Call 1995)

Joseph Byrne (Call 2016)

Jane Heybroek (Call 2003)

Lawrence Youssefian (Call 2013)

Kezia Tobin (Call 2010)

Alexis Slatter (Call 1999)

Amanda Walker (Call 2011)

Paul Richardson, Goldsmith Chambers (Call 1995)

Daniel Coleman (Call 1994)

Linda Turnbull (Call 1998)

## **Lamb Building**

Eric Fripp (Call 2000)

Bojana Asanovic (Call 2000)

Araniya Kogulathas (Call 2014)

Justine Fisher (Call 1994)

Raphael Jesurum (Call 2006)

Matthew Moriarty (Call 2010)

Jane Elliot-Kelly (Call 2009)

Jamil Dhanji (Call 2010)

Deborah Revill (Call 2009)

Emma Daykin (Call 2005)

Sandra Akinbolu (Call 2002)

Keelin McCarthy (Call 2007)

## **Doughty Street Chambers**

Charlotte Kilroy QC (Call 1999, Silk 2019)

Laura Dubinsky (Call 2002)

Phil Haywood (Call 2001)

Mark Henderson (Call 1994)

Alasdair Mackenzie, (Call 2004)

Paul Draycott (Call 1994)

Catherine Meredith (Call 2008)

Rowena Moffatt (Call 2009)

Marisa Cohen (Call 2010)

Antonia Benfield (Call 2013)

Jelia Sane (Call 2013)

Agata Patyna (Call 2014)

Zoe Harper (Call 2015)

**Other signatories**

Raza Husain QC, Matrix Chambers (Call 1993, Silk, 2010)

Dr Anton van Dellen, Fraser Chambers (Call 2010)

Helena Wilson, The Bar Library, Belfast (NI) (Call 2015)

Karen Reid, The 36 Group (Call 2010)

Frances Shaw, No. 5 Chambers (Call 2007)

Shanthi Sivakumaran, No. 5 Chambers (Call 2013)

Emma Harris, 10KBW (Call 2011)

Jessica Smeaton, No. 5 Chambers (Call 2008)