

Policy statement setting out the factors we take into account when deciding not to be represented at an oral hearing

The Commissioner will not be able to attend every oral hearing listed as he has to ensure that there is a careful and proportionate use of limited public resources. This statement sets out the Commissioner's policy on when to attend an oral hearing listed by the Tribunal.

Would normally expect to attend

The Commissioner would normally expect to attend an oral hearing in the following cases:-

- i) The Appellant is the public authority.
- ii) The Commissioner is the public authority

Likely to attend

The Commissioner will be likely to wish to attend an oral hearing in the following cases:-

- i) If the appeal involves an important policy issue which may have an impact upon a present policy line.
- ii) If the appeal concerns a new policy issue or novel point of law not previously considered by the Tribunal.
- iii) If the issue before the Tribunal involves whether certain information is personal data (as opposed to compliance with the first data protection principle).
- iv) If the appeal concerns a sensitive political issue.

Unlikely to attend

The Commissioner is unlikely to attend an oral hearing in the following cases:-

- i) The Commissioner's decision relating to section 14 alone is being challenged.
- ii) The Commissioner's decision concerning whether the information is held or not held is being challenged.
- iii) The Commissioner is unlikely to be able to meaningfully assist the Tribunal, e.g. there is a dispute over matters of fact that only the PA can assist with.
- iv) Where the PA is joined and the Commissioner is in complete agreement with their position.

- v) The Commissioner feels that he can adequately make any arguments he wishes to make in writing.
- vi) Derogation cases.
- vii) Costs limit cases

The Commissioner should be able to rely upon written submissions in such cases and will generally not be able to assist the Tribunal further at a hearing.