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## UPPER TRIBUNAL IMMIGRATION AND ASYLUM CHAMBER

### GUIDANCE NOTE 2011 No 2

#### REPORTING DECISIONS OF THE UPPER TRIBUNAL IMMIGRATION AND ASYLUM CHAMBER

This guidance note is issued under Paragraph 7 of Schedule 4 to the Tribunal, Courts and Enforcement Act 2007. It was amended in February 2012, September 2013, March 2014, July 2015, July 2017, January 2018 and May 2021.

1. The Upper Tribunal Immigration and Asylum Chamber (the Chamber) decides some 6000 appeals a year. Most decisions turn upon their particular facts and the application of the provisions of the Immigration Rules and statutory regime applicable to the case.
2. The Chamber at present normally sits in constitutions of one either with a permanent or deputy judge of the Upper Tribunal. Occasionally the Chamber will sit as a panel with an Upper Tribunal Judge, the President or other senior judicial member of the Upper Tribunal presiding.
3. Most decisions of the Chamber are unreported. It is not considered conducive to the overriding objective for thousands of fact-sensitive decisions to be published, placing onerous obligations on advocates and litigants in person to search for decisions of potential relevance to their own.
4. Following promulgation to the parties unreported decisions are stored electronically and may be accessed on the Chamber web site at <https://tribunalsdecisions.service.gov.uk/utiac/decisions>. By the terms of the Senior President's Practice Direction 11, unreported decisions of the Chamber may not be cited as authority without permission of the judge that will only be granted sparingly where there is good reason to do so.
5. The Chamber has a Reporting Committee, whose task is the selection of cases considered suitable for reporting applying the criteria set out in the appendix to this note. It normally convenes monthly.
6. Decisions in which a permanent judge of the Chamber or visiting senior judge has participated may be suitable for reporting. Decisions in which a panel of judges has sat may be considered more authoritative than decisions of a single judge of the Chamber.

7. Promulgated determinations that a permanent judge of the Chamber considers meets the criteria for reporting may be nominated for consideration by the Reporting Committee. If the decision was made by a single such judge (other than the Chamber President or Vice President), the nomination should be sponsored by another permanent judge (not a member of the Reporting Committee). When a nomination is made the Committee reviews the determination for compliance with the criteria and may advise the determining judge on the words of the keywords and italicised summary that must accompany reported cases. Debatable cases are referred to the Chamber President for decision.
8. Representatives may refer decisions they consider meet the reporting criteria to the Chair of the Committee<sup>1</sup> for consideration but resources prevent the Chamber corresponding about reporting decisions.
9. Where a decision is selected for reporting it is given a neutral citation number and placed on the Chamber website as soon as practicable thereafter. Both reported decisions and unreported decisions (since 1 June 2013) may be found on the website. Both classes are searchable by title and subject matter. (but see paragraph 4 above). Decisions of the Chamber are available on a number of other publicly available websites and legal databases.
10. In the event of diverging jurisprudence on an important question of law, a decision of a panel of the Chamber may be reported as a starred case, when it will become binding<sup>2</sup>. In the absence of a starred case the common law doctrine of judicial precedent does not apply and decisions of the AIT and one constitution of the Chamber do not as a matter of law bind later constitutions. Judges of the First-tier Tribunal Immigration and Asylum Chamber are, however, expected to follow the law set out in reported cases, unless persuaded that the decision failed to take into account an applicable legislative provision or a binding decision of a superior court. Where there is reasonable doubt about whether a decision of the AIT or the Chamber should continue to be followed permission to appeal to the Chamber may well be granted in appropriate cases. Further guidance on permission to appeal to the Chamber is given in the Presidential Guidance Note 2011 No 1 Permission to Appeal.
11. Special arrangements are made for the reporting of country guidance cases. Before a case is promulgated and designated as a Country Guidance case it is considered by the Reporting Committee and advice on presentation of the decision for reporting may be tendered to the determining judges. For the avoidance of doubt, the Reporting Committee has no role in formulating or contributing to the decision of the judges who heard the case. Practice Direction 12.2 states:

<sup>1</sup> Currently Mr. C M G Ockelton (Vice President)

<sup>2</sup> See s.107(3)(b) of the Nationality, Immigration and Asylum Act 2002 and the Senior President's Practice Direction 12.1

“A reported determination of the Tribunal, the AIT or the IAT bearing the letters CG shall be treated as authoritative finding on the country guidance issue identified in the determination, based on the evidence before the members of Tribunal ... that determine the appeal. As a result, unless it has been expressly superseded or replaced by any later CG determination, or is inconsistent with other authority that is binding on the Tribunal, such a country guidance case is authoritative in any subsequent appeal, so far as that appeal:-

- a) relates to the country guidance issue in question; and
- b) depends upon the same or similar evidence”

If there is credible fresh evidence relevant to the issue that has not been considered in the Country Guidance case or, if a subsequent case includes further issues that have not been considered in the CG case, the judge will reach the appropriate conclusion on the evidence, taking into account the conclusion in the CG case so far as it remains relevant.

12. Country Guidance cases will remain on the UTIAC web site unless and until replaced by fresh Country Guidance or reversed by a decision of a higher court. Where Country Guidance has become outdated by reason of developments in the country in question, it is anticipated that a judge of the First-tier Tribunal will have such credible fresh evidence as envisaged in paragraph 11 above. Where there is reasonable doubt as to whether Country Guidance is still applicable permission to appeal to the Chamber may well be given in an appropriate case.
13. The criteria for reporting cases include cases where the factual findings may be of some general interest. As a general rule, cases deciding factual issues are selected for reporting only if they meet the criteria for country guidance, but occasionally there may be cases where factual findings are likely to be of importance for other determinations where for one reason or another it has not been possible or appropriate to report the case as an authoritative Country Guidance one. These cases will be found on the recent decisions part of the Chamber website without the letters CG. Reported decisions that are not Country Guidance cases are of persuasive value only on the facts.
14. Judgments of the Chamber on applications for judicial review (following grant of permission) in immigration judicial review proceedings<sup>3</sup> are published on the website, without keywords or italicised summary.

<sup>3</sup> See the First-tier Tribunal and Upper Tribunal Chambers Order 2010 (SI 2010/2655) (as amended), article 11(d).

15. If a judicial review judgment that follows the grant of permission meets the general criteria for reporting (including, where relevant, as a country guidance case), it will be reported and given a neutral citation number, keywords and an italicised summary.
16. The objective of this Guidance Note and the practices of the Chamber with regard to reporting of decisions is to promote consistency of high-quality decision making in the field of immigration, asylum, free movement and related human rights law and transparency and ease of access by interested parties to the most significant of the Chamber's decisions. These practices are kept under regular review in the light of developing experience.

Mr. Justice Lane  
President

21 May 2021

(Guidance Note of July 2011, amended September 2013, March 2014, July 2015, January 2018 and May 2021)

## CRITERIA FOR REPORTING

1. In deciding whether a decision should be reported the Reporting Committee shall apply the criteria set out below.
2. A decision will be reported where the Reporting Committee considers that it has general significance and utility in the development of the UT's law, is sufficiently well reasoned and is consistent with binding statutory provisions or precedent of the senior courts.
3. Decisions selected for reporting by virtue of paragraph 2(a) will have at least one, and normally more than one, of the following features:
  - (a) the Tribunal has considered previous decisions on the issue or issues and has had sufficient argument on them;
  - (b) the decision considers a novel point of law, construction, procedure and practice, or develops previous decisions in the same area;
  - (c) the decision gives guidance likely to be of general assistance to other judges, the parties or practitioners;
  - (d) the decision contains an assessment of facts of a kind that others ought to be aware of, because it is likely to be of assistance in other cases; or
  - (e) there is some other compelling reason why the decision ought to be reported.
4. A decision selected for reporting by virtue of paragraph 2 will be given key words and italic wording, summarizing the matters in respect of which it is being reported.