



.....  
| SENIOR PRESIDENT |  
| OF TRIBUNALS |

# Practice Direction of the Immigration and Asylum Chamber of the First-tier Tribunal

## *Contents*

### **Part 1 Preliminary**

1. Interpretation, etc.

### **Part 2**

2. Starting an appeal in the Tribunal
3. Case Management
4. Adjournments
5. Evidence generally
6. Expert evidence
7. Child, vulnerable adult and sensitive witnesses
8. Citation of unreported determinations
9. Starred and country guidance decisions
10. Bail applications
11. Assignment of judicial functions in the First-tier Tribunal
12. Record of proceedings
13. Practice Statements by President

## 14. Judicial titles and forms of address

### Part 1

#### Preliminary

##### **1. Interpretation, etc.**

1.1. In this Practice Direction:

“the 2007 Act” means the Tribunals, Courts and Enforcement Act 2007;

“AIT” means the Asylum and Immigration Tribunal;

“audio recording” includes a digital or analogue recording, as well as a video recording which includes an audio recording;

“ASA” means an Appeal Skeleton Argument, which must contain three sections:

- (1) a brief summary of the appellant’s factual case;
- (2) a schedule of issues;
- (3) the appellant’s brief submissions on those issues, which should state why the appellant disagrees with the respondent’s decision with sufficient detail to enable the reasons for the challenge to be understood;

and must:

- (a) be concise;
- (b) be set out in numbered paragraphs;
- (c) engage with the decision letter under challenge;
- (d) not include extensive quotations from documents or authorities; and
- (e) identify but not quote from any evidence or principle of law that will enable the basis of challenge to be understood;

“child” means a person who has not attained the age of 18;

“CMA” means a Case Management Appointment before a Legal Officer;

“CMR” means a Case Management Review hearing before a Judge;

“final hearing” means a hearing at which the appeal is expected to be allowed, dismissed or brought to an end in some other way;

“IAT” means the Immigration Appeal Tribunal;

“Legal Officer” means a member of staff appointed under section 40(1) of the 2007 Act or section 2(1) of the Courts Act 2003 and designated as a Legal Officer by the President;

“linked appeal” means an appeal where the appeal of one or more appellants raise common issues;

“offline appeal” means an appeal that is started by means other than using the MyHMCTS platform;

“online appeal” means an appeal that is started using the MyHMCTS platform;

“Practice Statement” means a statement of guidance by the Immigration and Asylum Chamber President of the First-tier Tribunal made under paragraph 7 of Schedule 4 to the 2007 Act.

“rule”, followed by a number, means the rule bearing that number in the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014;

“sensitive witness” means an adult witness where the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with giving evidence in the appeal;

“the President” means the President of the Immigration and Asylum Chamber of the First-tier Tribunal;

“the Tribunal” means the Immigration and Asylum Chamber of the First-tier Tribunal;

“vulnerable adult” has the same meaning as in the Safeguarding Vulnerable Groups Act 2006.

- 1.2. Except where expressly stated to the contrary, any reference in this Practice Direction to an enactment is a reference to that enactment as amended by or under any other enactment.
- 1.3. Other expressions in this Practice Direction have the same meanings as in the 2007 Act.
- 1.4. Unless the contrary expressly appears this Practice Direction replaces all previous Practice Directions relating to the Tribunal. Where any previous Practice Directions which this Practice Direction replaces made provision in part or in whole to the Upper Tribunal, this Practice Direction relates only to the First-tier Tribunal. Any such previous Practice Directions therefore are to be read as if they do not apply to the First-tier Tribunal.

## **Part 2**

### ***2. Starting an appeal in the Tribunal***

- 2.1 All appeals to the Tribunal must be started using the online procedure (accessed through MyHMCTS) unless it is not reasonably practicable to do so.
- 2.2 Where it is not reasonably practicable to start an appeal by using MyHMCTS, the notice of appeal must be in the appropriate form as displayed on the Gov.uk website at the time when the notice is given, or that form with any variations that circumstances may require.
- 2.3 Where an appellant asserts that it is not reasonably practicable to start an appeal by using MyHMCTS, the appellant must at the same time state why it is not reasonably

practicable to do so. If the Tribunal agrees, the appellant may proceed without using MyHMCTS. In such a case, the notice of appeal must set out the grounds of appeal relied upon.

- 2.4 The President may issue Practice Statements to judges and Legal Officers as to those circumstances in which the Tribunal will or is likely to accept that it is not reasonably practicable to start an online appeal.
- 2.5 Where the Tribunal does not accept an offline appeal, the appellant must provide the Tribunal with the following information when making any consequential application to extend the time for bringing an online appeal:
  - (i) the date when the offline appeal was provided and its appeal number;
  - (ii) the date when the Tribunal declined to accept it.
- 2.6 In linked appeals the appellant must provide to the Tribunal the notice of appeal together with the reference number or numbers of any linked appeals if known. If an appeal becomes linked after the bringing of an appeal the appellant must provide to the Tribunal the reference number or numbers of any linked appeals as soon as reasonably practicable.
- 2.7 The President may issue Practice Statements setting out directions which shall ordinarily apply:
  - (a) where an appeal is brought online using “MyHMCTS”;
  - (b) where an appeal is brought not using “MyHMCTS”;
  - (c) where an appeal is brought by a person without representation; and
  - (d) where an appeal is brought in any other circumstances.
- 2.8 An appellant without representation, or an appellant in an offline appeal, does not need to provide an ASA.
- 2.9 Subject to the above, the form of notice approved for the purpose of:
  - (a) rule 19 (notice of appeal); and
  - (b) rule 33 (application for permission to appeal);

as the case may be, is the appropriate form as displayed on the Tribunal’s website at the time when the notice is given, or that form with any variations that circumstances may require.

### **3. Case Management**

- 3.1 Upon receipt of a notice of appeal the Tribunal will take steps in the order in which they appear below:
- (a) decide whether there is a right of appeal against the decision to which it relates;
  - (b) decide whether the appeal has been brought in time, and if not whether to allow an extension of time;
  - (c) issue any directions.
- 3.2 The Tribunal will hold a CMA or CMR whenever it considers it necessary to do so in order to further the overriding objective of dealing with cases fairly and justly under rule 2. This will include (but will not be limited to) holding a CMA or CMR for the purpose of –
- (a) identifying and/or narrowing the issues, and consequentially the evidence necessary to decide the appeal;
  - (b) dealing with preliminary issues;
  - (c) deciding any applications made by either party;
  - (d) giving case management directions;
  - (e) deciding the mode of hearing;
  - (f) fixing a date for the final hearing.
- 3.3 It is important that the parties and their representatives understand that a CMR is a hearing in the appeal and that the appeal may be decided if a party does not appear and is not represented at that hearing.
- 3.4 In addition to the directions referred to above, at the end of a CMA or CMR the Tribunal will also give to the parties written confirmation of:
- (a) any issues that have been agreed at a CMA or CMR as being relevant to the appeal;  
and
  - (b) any concessions made by a party.

### **4. Adjournments**

- 4.1. An application for the adjournment of an appeal must be made no later than 16:00 one clear working day before the date of the hearing.
- 4.2. For the avoidance of doubt, where a case is listed for hearing on, for example, a Monday, the application must be received by 16:00 on the previous Thursday.
- 4.3. An application for an adjournment must be supported by full reasons.

- 4.4. Any application made later than the end of the period mentioned in paragraph 4.1 must be made at the hearing and will, save in exceptional circumstances, require the attendance of the party or the representative of the party seeking the adjournment.
- 4.5. **Parties must not assume that an application will be successful even if made in accordance with paragraph 4.1.**
- 4.6. If an adjournment is not granted and the party fails to attend the hearing, the Tribunal may proceed with the hearing in that party's absence.

### ***5. Evidence Generally***

- 5.1. A witness statement should be capable of standing as the totality of the evidence in chief of the person giving that statement.
- 5.2. A witness statement may be added to by the provision of a supplementary statement provided that the supplementary statement is filed and served in accordance with any directions given in the appeal.
- 5.3. Only in exceptional circumstances and with the leave of the Tribunal, will a witness be permitted to provide additional evidence in chief.
- 5.4. Where a hearing is adjourned because of the introduction of late evidence the Tribunal will consider whether to exercise its costs powers.

#### *Body of witness statement*

- 5.5. The witness statement must, if practicable, be in the intended witness's own words and must in any event be drafted in a language they understand. The statement should be expressed in the first person and should also state:
- (a) the full name of the witness,
  - (b) their place of residence or, if they are making the statement in their professional, business or other occupational capacity, the address at which they work, the position they hold and the name of their firm or employer,
  - (c) their occupation, if they have one,
  - (d) the fact that they are a party to the proceedings or are the employee of such a party if it be the case, and
  - (e) the process by which it has been prepared, for example, face-to-face, over the telephone, and/or through an interpreter.
- 5.6. A witness statement must indicate:
- (a) which of the statements in it are made from the witness's own knowledge and which are matters of information or belief, and

- (b) the source for any matters of information or belief.
- 5.7 An exhibit used in conjunction with a witness statement should be verified and identified by the witness and remain separate from the witness statement.
- 5.8 Where a witness refers to an exhibit or exhibits, they should state 'I refer to the (description of exhibit) marked...''.
- 5.9 Where a witness makes more than one witness statement to which there are exhibits, in the same proceedings, the numbering of the exhibits should run consecutively throughout and not start again with each witness statement.

### *Statement of Truth*

- 5.10 A witness statement is the equivalent of the oral evidence which that witness would, if called, give in evidence. It must include a statement by the intended witness in their own language that they believe the facts in it are true.
- 5.11 To verify a witness statement the statement of truth is as follows:

'I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.'
- 5.12 Where a witness statement is in a language other than English—
  - (a) the party wishing to rely on it must—
    - (i) have it translated; and
    - (ii) file the translation and the foreign language witness statement with the tribunal; and
  - (b) the translator must sign the original statement and must certify that the translation is accurate.

### **6. Expert evidence**

- 6.1 An expert's report should be addressed to the Tribunal and not to the party from whom the expert has received instructions.
- 6.2. An expert's report must:
  - (a) give details of the expert's qualifications;
  - (b) give details of any literature or other material which the expert has relied on in making the report;

- (c) contain a statement setting out the substance of all facts and instructions given to the expert which are material to the opinions expressed in the report or upon which those opinions are based;
- (d) make clear which of the facts stated in the report are within the expert's own knowledge;
- (e) say who carried out any examination, measurement or other procedure which the expert has used for the report, give the qualifications of that person, and say whether or not the procedure has been carried out under the expert's supervision;
- (f) where there is a range of opinion on the matters dealt with in the report:
  - (i) summarise the range of opinion, so far as reasonably practicable, and
  - (ii) give reasons for the expert's own opinion;
- (g) contain a summary of the conclusions reached;
- (h) if the expert is not able to give an opinion without qualification, state the qualification; and
- (i) contain a statement that the expert understands his or her duty to the Tribunal and has complied and will continue to comply with that duty.

6.3 An expert's report must be verified by a statement of truth as well as containing the statements required in paragraph 6.2(h) and (i).

6.4 The form of the statement of truth is as follows: *"I confirm that insofar as the facts stated in my report are within my own knowledge I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion"*.

**7. *Circumstances under which a child, vulnerable adult or sensitive witness may give evidence***

7.1 Regard is to be had to the latest version of the Equal Treatment Bench Book produced by the Judicial College. Without prejudice to the forgoing regard is to be had to the following considerations.

7.2 A child, vulnerable adult or sensitive witness will only be required to attend as a witness and give evidence at a hearing where the Tribunal determines that the evidence is necessary to enable the fair hearing of the appeal and their welfare would not be prejudiced by doing so.

7.3 In determining whether it is necessary for a child, vulnerable adult or sensitive witness to give evidence to enable the fair hearing of an appeal the Tribunal should have regard to all the available evidence and any representations made by the parties.



- 7.4 In determining whether the welfare of the child, vulnerable adult or sensitive witness would be prejudiced it may be appropriate for the Tribunal to invite submissions from interested persons, such as a child's parents.
- 7.5 The Tribunal may decline to issue a witness summons under the Tribunal Procedure Rules or to permit a child, vulnerable adult or sensitive witness to give evidence where it is satisfied that the evidence is not necessary to enable the fair hearing of the appeal and must decline to do so where the witness's welfare would be prejudiced by them giving evidence.

***Manner in which evidence is given***

- 7.6 The Tribunal must consider how to facilitate the giving of any evidence by a child, vulnerable adult or sensitive witness.
- 7.7 It may be appropriate for the Tribunal to direct that the evidence should be given by telephone, video link or other means directed by the Tribunal, or to direct that a person be appointed as an intermediary, or where appropriate Litigation Friend (in Scotland, Curator ad Litem).

**8. *Citation of unreported decisions***

- 8.1 A decision or judgment of any court or tribunal which has not been reported may not be cited in proceedings unless:
- (a) the person who is or was the appellant before the Tribunal, or a member of that person's family, was a party to the proceedings in which the previous decision was issued; or
  - (b) the Tribunal gives permission.
- 8.2. An application for permission to cite an unreported decision or judgment must:
- (a) include a full transcript of the decision or judgment;
  - (b) identify the proposition for which the decision or judgment is to be cited; and
  - (c) certify that the proposition is not to be found in any reported decision or judgment.

**9. *Starred and Country Guidance decisions***

- 9.1 Reported decisions of the Upper Tribunal, the AIT, and the IAT, which are "starred" shall be treated by the Tribunal as authoritative in respect of the matter to which the "starring" relates, unless inconsistent with other authority that is binding on the Tribunal.
- 9.2 A reported decision of the Upper Tribunal, the AIT, or IAT, bearing the letters "CG" shall be treated as an authoritative finding on the country guidance issue identified in the decision, based upon the evidence before the members of the Upper Tribunal, the

AIT, and the IAT that decided the appeal. As a result, unless it has been expressly superseded or replaced by any later “CG” decision, 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.

9.3 A list of current CG cases will be maintained on the Upper Tribunal’s website. Any representative of a party to an appeal concerning a particular country will be expected to be familiar with the current CG decisions relating to that country.

9.4 Because of the principle that like cases should be treated in like manner, any failure to follow a clear, apparently applicable CG case or to show why it does not apply to the case in question is likely to be regarded as a ground for appeal on a point of law.

## **10. Bail applications**

10.1 The form for application for bail approved for the purpose of rule 38 is the appropriate form as displayed on the Gov.uk website at the time when the application is made, or that form with any variations that circumstances may require. Subject to rule 39(3), an application for bail must, if practicable, be listed for hearing within six working days of receipt by the Tribunal of the notice of application.

10.2 Any such notice which is received by the Tribunal after 15:30 on a particular day will be treated for the purposes of this paragraph as if it were received on the next business day.

10.3 An Upper Tribunal judge may exercise bail jurisdiction by reason of being also a First-tier Tribunal Judge.

## **11. Assignment of judicial functions in the First-tier Tribunal**

11.1 Any case management function that has been delegated by the Senior President of Tribunals to a Legal Officer, in respect of which the President has also given their authorisation, will normally be exercised by a Legal Officer, subject to the right of a party to apply for any decision made by a Legal Officer to be considered afresh by a judge under rule 3(4).

11.2 Legal Officers will only be permitted to conduct a CMA where they have demonstrated their competence to the satisfaction of the President in accordance with the Practice Statement made under this Direction.

## **12. Record of proceedings**

12.1 The Tribunal will keep a record of the proceedings of every hearing.

- 12.2 The record of proceedings referred to in paragraph 12.1 will normally be an audio recording rather than a written record. Accordingly, any written record of the proceedings taken by the Tribunal will only be disclosed to the parties if an audio recording was not made or has become unavailable.
- 12.3 Any application made to the Tribunal for disclosure of the record of proceedings shall be considered by the President.
- 12.4 If an anonymity direction or order has been made in relation to an appeal or any linked appeal then the President shall consider whether redaction or gisting of part or parts of the record of proceedings would permit disclosure of the record of proceedings.
- 12.5 If a case file is stored digitally then it will be sufficient to make provision (such as a hyperlink) within the digital file to access the record of proceedings.
- 12.6 The President may issue a Practice Statement to provide for, subject to any fee which may be payable, the manner and circumstances in which access to the record of proceedings may be made available as well as the use to which it may be put.
- 12.7 A breach of any conditions imposed by the President attaching to the disclosure of any record of proceedings may result in proceedings for contempt of court.

### **13 Practice Statements by President**

- 13.1 In addition to those matters set out at paragraphs 2.4, 2.7, 11.2 and 12.6, the President may issue Practice Statements.

### **14 Judicial Titles and Forms of Address**

- 14.1 In formal documents, judges' titles will be set out as follows:-
- i) Upper Tribunal Judges sitting in the First-tier Tribunal will be identified in their written judicial decisions as "Upper Tribunal Judge X sitting in the First-tier Tribunal".
  - ii) Deputy Judges of the Upper Tribunal, whether or not they are also Judges of the First-tier Tribunal, will when sitting in the Upper Tribunal, but only when sitting in that capacity, be identified in their written judicial decisions as "Deputy Upper Tribunal Judge X".
  - iii) Resident Judges when sitting in the First-tier Tribunal will be identified in their written judicial decisions as "Resident Judge X of the First-tier Tribunal".
  - iv) Designated Judges when sitting in the First-tier Tribunal will be identified in their written judicial decisions as "Designated Judge X of the First-tier Tribunal".

- v) Assistant Resident Judges and all other Judges of the First-tier Tribunal sitting in the First-tier Tribunal will be identified in their written decisions as “Judge X of the First-tier Tribunal”.
- vi) The decision will be signed indicating the capacity in which the judge is sitting: i.e. a Judge of the Upper Tribunal or a Judge of the First-tier Tribunal.

14.2 All judges are to be addressed as “Judge” or “Sir” or “Madam” as the case may be.

**This Practice Direction is made by the Senior President of Tribunals with the agreement of the Lord Chancellor under section 23 of the 2007 Act.**

13 May 2022

Sir Keith Lindblom

Senior President of Tribunals