



JUDGE MICHAEL CLEMENTS
President of the First Tier Immigration and Asylum Tribunal
Practice Statement No 1 of 2022

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PART 1

PRELIMINARY

1. Background

- 1.1 This Practice Statement replaces all previous Practice Statements issued by the President insofar as they relate to the First-tier Tribunal (Immigration and Asylum Chamber).

2. Interpretation, etc.

- 2.2 In this Practice Statement:

“AEC” means Appellant’s Explanation of Case

“ASA” means Appeal Skeleton Argument

“the 2008 Order” means the First-tier Tribunal and Upper Tribunal (Composition of Tribunal) Order 2008 (as amended by the First-tier Tribunal and Upper Tribunal (Composition of Tribunal) (Amendment) Order 2018);

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

“CMA” means a case management appointment before a Legal Officer;

“CMR” means a case management review hearing before a Judge;

“decision” includes any decision of the Tribunal;

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

“final hearing” means the hearing at which a Judge or panel decide the substantive issues in the appeal such that the appeal is either allowed, dismissed or brought to an end in some other way;

“record of proceedings” means the audio record of any hearing or CMA made by a judge or Legal Officer, or, in the absence of an audio record any notes, made in writing or digitally, howsoever stored or any written record made in its stead;

“Legal Officer” means a person approved by the President to carry out specified functions in the Tribunal.

PART 2

3. Where the Tribunal may not accept a notice of appeal (rule 22)

- 3.1 The Tribunal will scrutinise a notice of appeal as soon as practicable after it has been lodged. Rule 22 makes no provision for any issue arising under this rule to be determined by means of a hearing or by reference to any representations of the parties.
- 3.2 The fact that a hearing date may have been given to the parties does not mean that the appeal must be permitted to proceed. Accordingly, if at a hearing it transpires that the notice of appeal does not relate to a decision against which there is, in the circumstances, an exercisable right of appeal, the Tribunal must so find; but it will do so in the form of a decision and reasons, rather than by means of a notice under rule 22.
- 3.3 If an appellant appeals online a Legal Officer may only decide an issue under rule 22 if they have been authorised by the President and, in any event, may not do so after an ASA or AEC, as the case may be, has been uploaded.
- 3.4 If an appellant appeals offline a Legal Officer may only decide an issue under rule 22 if they have been authorised by the President and the appeal has not yet been listed for final hearing.
- 3.5 Judges and Legal Officers should not normally accept that it is impractical to start an appeal online by reason of temporary difficulties, such as those involved in registering with MyHMCTS or other problems of a technical nature, even where such problems may result in non-compliance with the time limits prescribed by rule 19. To prevent any disadvantage or unfairness that may otherwise result from such temporary difficulties, the following procedure should normally be followed in such circumstances –
 - (i) Where an appeal against an appealable decision is started offline and the Tribunal concludes that it would be reasonably practicable to start that appeal online, the appellant shall be notified that the appeal has been stayed for a period of three months under rule 4(3)(j) in the expectation that the appeal will be recommenced online.
 - (ii) Where the Tribunal accepts an online appeal that is substantially the same as an earlier offline appeal, those appeals should normally be consolidated under rule 4(3)(b).
 - (iii) Where an offline appeal against an appealable decision is brought within the relevant time limit prescribed by rule 19 and is stayed under (i) above, the Tribunal

should normally grant an application to extend the time for starting an online appeal provided that (a) the online appeal is substantially the same as the earlier offline appeal, and (b) the online appeal was started within 14 days of being sent notice of the stay of the offline appeal. For the avoidance of doubt, all other applications for an extension of time to start an appeal (whether offline or online) should be determined upon their individual merits.

- (iv) Where the stay of an offline appeal under (i) above ends without an online appeal being brought under (iii) above, the offline appeal shall be decided without a hearing under rule 25(1).

4. Circumstances in which it shall be deemed not reasonably practicable to commence an appeal by using MyHMCTS (pursuant to paragraph 2.4 of the Practice Direction)

- 4.1 Examples of circumstances in which it shall be deemed not to be reasonably practicable to commence an appeal using MyHMCTS will be published on the First-tier Tribunal website.

5. Review of decision of Legal Officer

- 5.1 Where a Legal Officer makes any decision then, in accordance with rule 3(4), the decision must include the following:

“The decision to issue this Notice was taken by a Legal Officer in exercise of a specified power granted by the Senior President of Tribunals under rule 3(2) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. You may within 14 days of the date of this notice apply to the Tribunal in writing for the matter to be considered afresh by a judge under rule 3(4) of the Tribunal Procedure Rules 2014.”

6. Record of proceedings

- 6.1 Any application for access to the audio record or other written document made in its stead shall be made in writing to the President.

- 6.2 The application must include:

- (a) the appeal reference number;
- (b) the date or dates of the hearing or CMA in respect of which the application is made;
- (c) the purpose for which access is sought;
- (d) whether an anonymity order is in place with respect to that appeal;
- (e) an undertaking that the record of proceedings will be used:
 - (i) only for the purpose or purposes stated in the application; and
 - (ii) that any conditions imposed will be adhered to;
- (f) a statement as follows: *“I understand that a breach of the undertaking which I have given may result in contempt proceedings being brought against me.”*;
- (g) if a fee is required proof of payment of that fee.

PART 3

7. Presiding Judge

7.1 Where more than one member of the Tribunal is to decide a matter, the presiding judge for the purposes of article 7 of the 2008 Order and this Practice Statement is to be decided by the panel in advance of the hearing.

8. Transfer of proceedings

8.1 Where: -

- (a) the Tribunal has started to hear an appeal but has not completed the hearing or given its decision; and
- (b) the President or their nominee decides that it is not practicable for the original tribunal to complete the hearing or give its decision without undue delay,

the President or their nominee may direct the appeal to be transferred to a differently constituted tribunal.

8.2 Where an appeal has been transferred under paragraph 8.1: -

- (a) any documents sent to or given by the Tribunal shall be deemed to have been sent to the differently constituted tribunal; and
- (b) the differently constituted tribunal will deal with the appeal as if it had been commenced before it.

9. Format of decisions

9.1 In order to ensure consistency in the formatting of decisions and statements of reasons, every decision of the Tribunal must: -

- (a) state in the heading whether the appeal is being decided following a hearing or without a hearing and the hearing centre to which it relates;
- (b) state, on each page, the reference number of the case;
- (c) have a copyright symbol and year at the foot of the first page;
- (d) state whether or not an anonymity order or direction has been made;
- (e) state whether a fee award has been made and if so the amount, including, if appropriate, brief reasons for any reduction in the full award;
- (f) state whether all the persons participating in the appeal were present in person and if not the means by which they participated;
- (g) be set out in sequentially numbered paragraphs; and
- (i) be signed and dated at its end or employ such electronic or other methods as the President may approve for signifying that the decision is finalised.

9.2 Where there is a panel comprising more than one judge the resulting decision will not express any dissenting view or indicate that it is that of a majority.

PART 4

10. Where an appeal is brought online using "MyHMCTS"

10.1 Model Directions appear at Annex A and will usually apply in all online appeals using MyHMCTS where an appellant is represented.

11. Where an appeal is brought, or case managed online, not using “MyHMCTS”

11.1 Model Directions appear at Annex B and will usually apply in all online appeals not using MyHMCTS. They should ordinarily be used where the Tribunal accepts that it is not reasonably practicable for the appeal to proceed using MyHMCTS.

12. Where an appeal is brought by a person without representation

12.1 Model Directions appear at Annex C will usually apply in appeals where the appellant is unrepresented and appeals online not using MyHMCTS.

12.2 Directions made by the Tribunal will take into account the means by which the appellant will communicate with the Tribunal, for example by ordinary post, other offline means or online.

13 Where an appeal is brought in any other circumstances.

13.1 Where the appellant appeals offline, by ordinary post or any other means and the Tribunal determines that it is in the interests of justice for the appeal to continue in that way, the Tribunal will make directions on a case by case basis using the directions above as the starting point but make such modifications as required having regard to the overriding objective.

PART 5

14. Child, vulnerable adult and sensitive appellants

14.1 In the case of a child, vulnerable adult and/or sensitive appellant, regard is to be had in the first instance to the latest version of the Equal Treatment Bench Book. Where it appears to the Tribunal that a Litigation Friend (in Scotland, Curator ad Litem), an Intermediary or a ground rules hearing may be required the matter shall be referred to the Resident Judge.

15. Anonymity directions and orders

15.1 When considering if an anonymity direction should be made, guidance issued by the President should be followed.

16 Granting of bail

16.1 When considering an application for bail, guidance issued by the President should be followed.

PART 6

ANNEX A

Provision of documents in the online procedure

A.1 These Directions refer throughout to material being ‘provided’. Material is provided only when it is uploaded on to the online system, whereupon an email notification will be sent to the parties that the new material has been provided. Time starts to run from when the material is provided.

Online Procedure

A.2 Grounds of appeal are not required when a Notice of Appeal is provided to the Tribunal in the online procedure.

A.3 *Respondent’s Bundle.* Not later than 28 days after the Notice of Appeal is provided, the respondent must provide a bundle compliant with rule 24(1) of the Tribunal Procedure (First-tier Tribunal)

(Immigration and Asylum Chamber) Rules 2014. This bundle must include the refusal decision and any material submitted in support of the application.

- A.4 *Appeal Skeleton Argument.* Not later than 28 days after the respondent’s bundle is provided, or 42 days after the Notice of Appeal, whichever is the later, the appellant must provide an Appeal Skeleton Argument (“ASA”).
- A.5 The ASA 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. A template is available online.
- A.6 The ASA 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;
 - (e) identify but not quote from any evidence or principle of law that will enable the basis of challenge to be understood.
- A.7 *Appellant’s Bundle.* Where the ASA refers to material which is not included in the respondent’s bundle, that material must be provided in an indexed and paginated bundle at the same time.
- A.8 *Respondent’s Response.* Within fourteen days of the ASA being provided the respondent must undertake a meaningful review of the appellant’s case, taking into account the ASA and appellant’s bundle, providing the result of that review and particularising the grounds of refusal relied upon.
- A.9 Pro-forma or standardised responses will be rejected by the Tribunal. The Review must engage with the submissions made and the evidence provided to the Tribunal.
- A.10 The appeal will be actively case managed.
- A.11 Any requirement set out above may be varied but in the absence of any such variation, the procedure set out above is to be followed.

Timetable

A.12

Period within which step is to be taken	Action
Day 1	Notice of appeal provided to Tribunal by MyHMCTS
Not later than 14 days after notice of appeal	Respondent’s bundle (“RB”) must be provided
28 days after provision of RB or 42 days after notice of appeal, whichever is later	Appellant must provide: (i) ASA (ii) Bundle of evidence in support

14 days after provision of appellant's ASA and evidence	Respondent must provide: Review with counter-schedule
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Late Material

- A.13 Any material provided outside the time limits may not be relied upon without leave.
- A.14 Where any material is provided after 5 working days prior to the hearing, including on the day of the hearing, the Judge must deal with the admissibility of that material at the hearing as a preliminary matter.
- A.15 A party may not rely on material which has not been provided.
- A.16 If an application is made to admit material and
- (a) the material is ruled inadmissible the material shall not be uploaded, though the Judge must give reasons in the Decision and Reasons for the exclusion of that material and identify the material excluded, and
 - (b) the material is admitted the Judge must stand the appeal down and cause the material to be uploaded as soon as reasonably practicable and will not proceed with the appeal until the material has been uploaded. The original material uploaded shall be returned to the party who provided it unless there is a good reason for not doing so.
- A.17 A party may apply to adduce material after the hearing has concluded but only in exceptional circumstances. Such material will only be admissible upon application unless the Judge has directed the provision of that material. The application must be made using the online procedure, unless it is made orally at the hearing. Any material ruled admissible **must** be uploaded.
- A.18 The Tribunal may not accept any material after the Decision and Reasons has been promulgated. This direction does not apply to any application for permission to appeal to the Upper Tribunal.

Change of Representation

- A.19 In the event of the appellant either changing representation or becoming unrepresented the Tribunal must be notified as soon as reasonably practicable. The Tribunal will then make further directions.

ANNEX B

Provision of Information by the Parties

- B.1 Within 5 working days of the date of this Notice parties must provide a direct contact number and dedicated email address to the Tribunal and to the other party to enable the Tribunal and the parties to communicate online and to take part in such remote hearings as are required.

Provision of Documents

- B.2 These Directions refer throughout to material being 'provided'. Material must be provided by email to the email address which appears at the foot of this Notice and to the other party or made available in such remote hearings as are required.

Provision of Information by Respondent

- B.3 Not later than 14 days after the date of this Notice, unless already provided, the respondent must provide a bundle compliant with rule 24(1) of the Tribunal Procedure (First-tier Tribunal)

(Immigration and Asylum Chamber) Rules 2014. This bundle must include the refusal decision and any material which was submitted in support of the application.

Appeal Skeleton Argument

- B.4 Not later than 28 days after the respondent’s bundle is provided, or 42 days after the Notice of Appeal, whichever is the later the appellant must provide an Appeal Skeleton Argument (“ASA”).
- B.5 The ASA must contain three sections:
 - (a) a brief summary of the appellant’s factual case;
 - (b) a schedule of issues;
 - (c) 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.
- B.6 The ASA 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;
 - (e) Identify but not quote from any evidence or principle of law that will enable the basis of challenge to be understood.

Appellant’s Bundle

- B.7 Where the ASA refers to material, which is not included in the respondent’s bundle, that material must be provided in an indexed and paginated bundle at the same time.

Respondent’s Response

- B.8 Within fourteen days of the ASA being provided the respondent must undertake a meaningful review of the appellant’s case, taking into account the ASA and appellant’s bundle and provide the result of that review and particularise any additional grounds of refusal.
- B.9 Pro-forma or standardised responses will be rejected by the Tribunal. The Review must engage with the submissions made and the evidence provided.
- B.10 The appeal will be actively case managed.

Summary Timetable

B.11

Period within which step is to be taken	Action
Not later than 14 days after the date of this Notice	Respondent’s bundle (“RB”) must be provided

28 days after provision of RB or 42 days after notice of appeal, whichever is later	Appellant must provide: (i) ASA (ii) Bundle of evidence in support
14 days after provision of appellant's ASA and evidence	Respondent must provide: Review with counter-schedule

Late Material

- B.12 Any material provided to the Tribunal outside the time limits provided for in paragraph 8 may not be relied upon without leave.
- B.13 Where any material is provided after 5 working days prior to the hearing, including on the day of the hearing, the Judge must deal with the admissibility of that material at the hearing of the appeal as a preliminary matter.

Case Management and Listing

- B.14 At each stage the appeal shall be considered by a Legal Officer or Judge who will decide on a case by case basis what additional directions, if any, are to be made in respect of that appeal and whether the appeal would benefit from a Case Management Appointment.
- B.15 A party may apply at any time for a variation of these directions.
- B.16 A party may apply at any time for a Case Management Appointment.

ANNEX C

Provision of Information by the Parties

- C.1 Within 5 working days of the date of this Notice parties must provide a direct contact number and dedicated email address to the Tribunal and to the other party to enable the Tribunal and the parties to communicate online and to take part in such remote hearings as are required.

Provision of Documents

- C.2 These Directions refer throughout to material being 'provided'. Material must be provided by email to the email address which appears at the foot of this Notice and to the other party or made available in such remote hearings as are required.

Provision of Information by Respondent

- C.3 Not later than 14 days after the date of this Notice, unless already provided, the respondent must provide a bundle compliant with rule 24(1) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. This bundle must include the refusal decision and any material which was submitted in support of the application.

Appellant's Explanation of Case (AEC)

- C.4 Not later than 28 days after the respondent's bundle is provided, or 42 days after the Notice of Appeal, whichever is the later, the appellant must provide an explanation of their case. This should contain reasons why the appellant believes the decision giving rise to the appeal is wrong. This is to enable the respondent to review the decision. (Upon receipt of the AEC a Tribunal Case Worker

will consider, before the document is sent to the Respondent, whether there should be a Case Management Appointment to enable the appellant to identify the issues in the appeal).

Appellant's Bundle

- C.5 Where the AEC refers to material, which is not included in the respondent's bundle, that material must be provided in a paginated bundle at the same time.

Respondent's Response

- C.6 Within fourteen days of the AEC being provided the respondent must undertake a meaningful review of the appellant's case, taking into account the AEC and appellant's bundle, and provide the result of that review and particularise any additional grounds of refusal.
- C.7 Pro-forma or standardised responses will be rejected by the Tribunal. The Review must engage with the submissions made and the evidence provided.
- C.8 The appeal will be actively case managed.

Summary Timetable

C.9

Period within which step is to be taken	Action
Not later than 14 days after the date of this Notice	Respondent's bundle ("RB") must be provided
28 days after provision of RB or 42 days after notice of appeal, whichever is later	Appellant must provide: Appellant's Explanation of Case Bundle of evidence in support
14 days after provision of appellant's AEC and evidence	Respondent must provide: Review with counter-schedule

Late Material

- C.10 Any material provided to the Tribunal outside the time limits provided for in directions may not be relied upon without permission from the Tribunal.
- C.11 Where any material is provided after 5 working days prior to the hearing, including on the day of the hearing, the Judge must deal with the admissibility of that material at the hearing of the appeal as a preliminary matter.

Case Management and Listing

- C.12 At each stage the appeal shall be considered by a Legal Officer or Judge who will decide on a case by case basis what additional directions, if any, are to be made in respect of that appeal and whether the appeal would benefit from a Case Management Appointment.
- C.13 A party may apply at any time for a variation of these directions.
- C.14 A party may apply at any time for a Case Management Appointment.

Change of Representation

C.15 In the event of the appellant becoming represented the Tribunal must be notified as soon as reasonably practicable. The Tribunal will then make further directions.