



Asylum and Immigration Tribunal

Guidance Note

July 2005

Case Management Review Hearings

This note is for guidance only. The Tribunal conducting an appeal hearing may adapt its procedure as required by the circumstances of an individual case.

1. Rule 45 of the Procedure Rules allows the Tribunal to direct that a case management review (CMR) hearing be held. In terms of the President's Practice Directions of 4 April 2005, paragraph 6.1, except where the Tribunal directs otherwise, a CMR hearing must be held in respect of every asylum appeal (other than a fast track appeal and an appeal in respect of which the determination of the Tribunal is ordered to be reconsidered), where the appellant:
 - (a) is present in the United Kingdom; and
 - (b) has a right of appeal whilst in the United Kingdom.

Attendance by the parties

2. A CMR hearing is regarded in terms of the Practice Direction, paragraph 6.2, as a hearing of the appeal. The hearing notice for the CMR draws the attention of the parties to this point and directs both the appellant and the respondent (or their representatives) to attend. The parties are informed that non-attendance may lead to the appeal being determined in absence.
3. Where a party fails to attend, however, the essential first response must be to check if the hearing notice has been properly served, or if there has been any change of address or representation which has not been properly notified or recorded.
4. In terms of rule 15(2) of the Procedure Rules, the appeal may be determined without a hearing or, in terms of rule 19, the appeal may be heard in the absence of a party. Case law in respect of previous Procedure Rules indicated that where the appeal is determined in the absence of a party by the immigration judge conducting the CMR hearing, then the appeal may be regarded as having been heard in the absence of a party, under rule 19. Where the appeal is determined as a paper case by an immigration judge other than the immigration judge who conducted the CMR hearing, then the appeal must

be treated as determined without a hearing, under rule 15(2). (See **JZ (Procedure – Adjudicators – No Hearing) Ivory Coast [2004] UKIAT 00102.**)

5. It is highly desirable that the representative for the appellant who attends the CMR hearing should be the same individual who will appear at the substantive hearing. If this is not the case, then an explanation should be sought and the expectation that the same individual will attend both hearings should be made clear.

Directions

6. So far as asylum appeals are concerned, the hearing notice which is issued on receipt of the appeal will specify both the date of the CMR hearing and the date of the substantive hearing. The hearing notice will have been accompanied by directions requiring the serving of witness statements and indexed and paginated bundles of any documentary evidence.
7. At the CMR hearing, consideration should be given to the issuing of additional directions. When deciding whether to issue additional directions, however, it should be borne in mind that, if the appeal is proceeding to the scheduled date for the substantive hearing, there will only be a maximum of 14 days for compliance with any new directions. The Tribunal should not place an unreasonable burden upon representatives. Furthermore, in terms of rule 45(5) of the Procedure Rules the Tribunal must not direct an unrepresented party to do something unless satisfied that the party is able to comply with the direction.
8. In terms of paragraph 6.5 of the Practice Direction, the Tribunal may direct the Appellant to serve a skeleton argument and a chronology. Consideration should be given, however, to whether these are likely to be of assistance or are necessary. It may be desirable to ask for a skeleton argument focused on particular legal issues, if these are unusually complex.
9. Provision is made by paragraphs 6.3 and 6.4 of the Practice Direction for each of the parties to provide the Tribunal with a draft of any directions they are requesting the Tribunal to make. At the end of the CMR hearing, the Tribunal will give to the parties any further written directions relating to the conduct of the appeal. A clerk of court will be in attendance to record any directions and issue paper copies on an AIT40 notice.

Panels

10. As recognised by paragraph 6.8 of the Practice Directions, if at the CMR hearing the Tribunal considers that the circumstances are such that the jurisdiction of the Tribunal at the full hearing should be exercised by a group of members, the Tribunal may give a direction to that effect at the CMR hearing. When exercising this power, however, regard should be given to the availability of immigration judges for the purpose of constituting a panel. The availability of senior immigration judges is restricted by the demands of reconsideration hearings and applications for review. Other immigration judges may have difficulty in altering their itineraries to sit on a panel if a replacement immigration judge will be required as a result. Consequently, even where a case is identified at the CMR stage as appropriate for a panel hearing, it may not be practicable to constitute a panel for this purpose.

11. It may be clear, following consultation or direction, that a particular appeal is suitable for a panel hearing as a country guidance case.
12. If it is clear that a panel hearing will be required, a direction may be made requiring an additional copy, or copies, of any documents to be lodged.
13. The Tribunal is under no duty to consider any representations by a party about the number or class of members of the Tribunal which should exercise the jurisdiction of the Tribunal (rule 44(1)). At the CMR hearing the concern of the parties should be with the issues arising in the appeal and not with the constitution of the Tribunal. It is generally inadvisable to inform the parties that a particular appeal will be heard by a panel as, for the reasons set out in paragraph 10, above, a panel may not be available on the day of the full hearing.

Adjournments

14. One of the functions of a CMR hearing is to try to ensure that the parties will be ready to proceed on the date of the substantive hearing. Time limits for hearing asylum appeals are short and under normal procedure there will be four weeks from the lodging of the appeal to the substantive hearing.
15. The Tribunal has a power to adjourn the substantive hearing, under Rule 47 of the Procedure Rules, subject to the terms of Rule 21. Prior to the CMR hearing, the appeal file should be checked for any written adjournment requests, as these will normally be left on file for the CMR hearing. Alternatively an oral application may be made at the hearing itself.
16. In terms of Rule 21(1), a party applying for an adjournment of a hearing must show good reason why an adjournment is necessary. It seems highly improbable that the short time scale envisaged by Rule 23 for determining an asylum appeal will amount to good reason in the absence of some other material factor. An application to adjourn for the production of further evidence is subject to Rule 21(3). The Tribunal must not allow an adjournment unless satisfied that the appeal cannot otherwise be justly determined (Rule 21(2)).
17. One of the principal reasons why an adjournment may be sought is to allow medical or expert reports to be obtained. If a request is made for an adjournment on this basis, regard should always be given to whether such a report would be necessary or material. There may be reports already lodged which address the point in question or it may be that the report proposed will have no material bearing on the outcome of the case. In order to assist in assessing the need for a report, the Appellant's representative should be asked to exhibit a copy of the letter of instruction.

Consideration of the issues

18. One of the perceived advantages of the introduction of CMR hearings was to allow the Tribunal to identify the issues in the appeal and focus the parties on those issues. This requires thorough preparation by the immigration judge prior to the hearing.
19. There are constraints, however, on how far the issues can be narrowed and defined. The Appellant's representative will probably still be in the process of

assisting the appellant in preparing the case. Until the appellant's witness statement is finalised, it may be difficult for aspects of the appellant's case to be conceded or reduced in significance.

20. It should also be borne in mind that unless the same immigration judge conducts the substantive hearing as conducts the CMR hearing, the earlier immigration judge has no power in law to exclude from consideration any issues which the immigration judge at the substantive hearing may consider relevant. Under no circumstances should the Tribunal at the CMR hearing purport to determine any substantive issues in dispute, such as the appellant's nationality, where the appeal is proceeding to a full hearing, unless the issue in question has been expressly agreed between the parties.
21. Bearing these points in mind, the Tribunal ought to have regard to the nature of the decision(s) appealed against and to the grounds of appeal. It should be possible to identify on what reasons recognised by the Refugee Convention the appellant is relying and on which Articles of the Human Rights Convention. Any issues arising under the immigration rules should also be identified.
22. If the appellant seeks to vary the grounds of appeal, this should be raised at the CMR hearing. In terms of Rule 14, the permission of the Tribunal for variation is required. It may be that the grounds of appeal as lodged are vague and unspecific. In terms of Rule 45(4)(d) the Tribunal may direct a party to provide further details of his case, or any other information which appears to be necessary for the determination of the appeal.
23. For the respondent, the presenting officer should have the power to concede particular points where appropriate, such as age, nationality, or ethnicity. The presenting officer ought to be able to indicate that particular paragraphs in the reasons for refusal letter will not be relied upon or are no longer material. The presenting officer ought to indicate any material issues arising in relation to section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 in respect of behaviour by the appellant to be taken into account as damaging to credibility.
24. Consideration should always be given to whether there is any relevant reported case law, particularly any relevant country guideline case.

Family matters

25. It is always worth ascertaining whether the appellant has any family members in the UK, and, if so, whether they are dependants or have claimed asylum themselves. It is desirable to hear appeals by members of the same family together, in terms of rule 20, but not if this will lead to a lengthy or indefinite delay in hearing one of the appeals.
26. Where a family member has already had an appeal, details of this should be made available, along with any determination, unless the determination has been over-turned. The findings made in the earlier determination, so far as relevant and still valid, will have to be taken into account in the later appeal. (See **TK (Consideration of Prior Determination – Directions) Georgia [2004] UKIAT 00149.**)

27. An appellant may be accompanied to the CMR hearing by young children. While there is no general prohibition to the admission of children to a hearing, their presence may be distracting at the full hearing, and there may be evidence which is unsuitable for children to hear. You may need to point out to the appellant that the Tribunal and its staff are unable to provide child care facilities and that the appellant ought to make arrangements for this. If the appellant, or a witness, is breast-feeding, each hearing centre ought to be able to provide a private room for this and any necessary breaks should be given in the hearing.

Special needs

28. Note should be taken of any special needs in relation to disability. Consideration should be given where required to the needs of unaccompanied minors or to any request for a gender specific hearing. In relation to unaccompanied minors, the Tribunal should have regard to the *Adjudicator Guidance Notes No 8 of April 2004*.

Practical points

29. Consideration should always be given to the following:
- Number of witnesses
 - Interpreter requirements
 - Availability of public funding
 - Points load for listing/ time estimate
30. Always make sure the file is in good order, with correspondence tagged on the right hand side and evidence in the pocket on the left. Evidence, e.g. a medical report, is sometimes wrongly filed on the correspondence tag, and *vice versa*. Any specific instructions to Tribunal staff should be recorded legibly on the left inside flap of the file cover. Any changes of address or of representative should be recorded legibly on the right inside flap.
31. The attached checklist should be completed, so far as relevant to the particular case, and inserted in the file.

**ASYLUM AND IMMIGRATION TRIBUNAL
Case Management Review Hearing**



KEEP ON FILE – NOT TO BE ISSUED TO PARTIES

Date:	Appeal No:
Appellant's Name:	
Appellant's Address: Confirmed/Change	Appellant's Representative: Confirmed/Change
Interpreter:	
Case Points:	Suitable to float: Yes/No
List for full hearing:- <ul style="list-style-type: none"> <input type="checkbox"/> before a single Immigration Judge <input type="checkbox"/> before a panel (after consultation with SIJ/DIJ) <input type="checkbox"/> not before 	
List:- <ul style="list-style-type: none"> <input type="checkbox"/> for further CMR/first hearing on <input type="checkbox"/> adjourn substantive hearing <input type="checkbox"/> transfer to 	
Chronology: Yes/No	Skeleton argument: Required/Not required
Special Requirements for Hearing:	
Directions to be issued: <ul style="list-style-type: none"> - Standard directions Yes/No - Additional directions: 	
Convention Reason:	
Article(s) relied upon:	

Section 8 2004 Act:	
Medical Evidence:	
Witnesses:	
Dependants:	
Change to Grounds of Appeal: Yes/No	Funding: Yes/No
What can be agreed: Appellant Respondent	
Reasons for Refusal letter – all to be relied upon?	
Appeals by other family members:	
Country Guidance:	

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