



TRIBUNALS
JUDICIARY

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 and July 2015.

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 fortnightly.
6. Decisions in which a permanent judge of the Chamber or visiting senior judge has participated are 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. When such 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 Committee¹ 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 web site. 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 web sites 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 binding². In the absence of a starred case the common law doctrine of judicial precedent shall 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 relevant country convener and the Reporting Committee and advice may be tendered to the determining judges. Practice Direction 12.2 states:

¹ Currently Upper Tribunal Judge Storey

² 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 web site 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 proceedings³ are automatically given a neutral citation (which includes the letters “IJR”) and reported, without keywords or italicised summary.

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

15. Although every judicial review judgment that follows the grant of permission is given a neutral citation number and reported, such a judgment may, in addition, be given keywords and an italicized summary, if the judgment also meets the general criteria for reporting (including, where relevant, as a country guidance case). Other types of judicial review decisions may also be reported, if they meet the general criteria for reporting, and will be given the appropriate neutral citation letters (see paragraph 14 above).
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 McCloskey
President

July 2011
(amended September 2013, March 2014 and July 2015)

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
 - (a) 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; or
 - (b) it is a decision which follows a substantive hearing of an application for judicial review
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(a) will be given key words and italic wording, summarizing the matters in respect of which it is being reported.
5. Where the committee considers that a decision falling within paragraph 2(b) also meets the criteria set out in paragraph 2(a) (read with paragraph 3), the committee will cause the decision to be given key words and italic wording, as described in paragraph 4.