



TRIBUNALS
JUDICIARY

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PRESIDENT OF THE UPPER TRIBUNAL IMMIGRATION AND ASYLUM CHAMBER

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JOINT PRESIDENTIAL GUIDANCE

FEE AWARDS IN IMMIGRATION APPEALS

Preamble

On 19 December the First-tier Tribunal (Immigration and Asylum Chamber) Fees order comes into force requiring those who appeal to the First-tier Tribunal to pay a fee¹.

By rule 23A(2) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (as amended by SI 2011 No. 2840) there is a power in the judge to direct the repayment of a fee in the case of an appellant whose appeal succeeds.

This guidance is issued to assist judges who have to decide on fee awards.

Introduction

1. In the courts, where there is power to award costs, it is usual for the unsuccessful party to pay the costs of the successful party which would include any fees paid to a court to bring an action.
2. Provision for a “fee award” is a new element for appeals to the FtTIAC. The making of an award is to be decided by the judge on the evidence before him or her and dealt with in the determination following the decision on outcome. The decision on fees is not part of the determination and is an excluded matter for the purposes of ss.11 and 13 of Tribunals, Courts and Enforcement Act 2007.
3. Where the Upper Tribunal sets aside a decision of the FtT judge and remakes it in favour of the appellant, the FtT award decision will fall away. The UT judge will need to consider the question of fees made in respect of the FtT appeal. In so doing the UT judge will be exercising functions of the FtT judge under s.12 (4)(a) of the Tribunals, Courts and Enforcement Act 2007.

¹ http://www.legislation.gov.uk/uksi/2011/2840/pdfs/uksi_20112840_en.pdf

4. Although each case will turn on the exercise of a judicial discretion in the light of the issues, the following guidelines should be considered by judges making these decisions.

Guidance

5. As a first principle, if an appellant has been obliged to appeal to establish their claim, which could and should have been accepted by the decision-maker, then the appellant should be able to recover the whole fee they paid to bring the appeal.

6. On the other hand, a different outcome may be appropriate if an appeal has been allowed principally because of evidence produced only at the appeal stage that could or should have been produced earlier, or if the appellant has otherwise contributed to the need for the appeal by their own action or inaction.


7. When deciding whether to make a fee award or the amount of such an award (up to the maximum of the appeal fee paid), a Judge sitting as a judge of the FtTIAC will have regard to all the circumstances. These will include the conduct of the parties, the reasons why the appeal succeeded, whether the appellant should have produced any fresh evidence that would have materially contributed to the success of the appeal at an earlier stage in the application.

8. The judge must make a decision in accordance with the principles of proportionality, taking into account all available information at the date of the hearing:

a) Where there is no good reason to displace the first principle it should apply. Examples of good reasons might include failure to produce evidence that should have been produced before the decision in question; delay in complying with judicial directions or responding to the submissions of the other party; other conduct that results in adjournments that could have been avoided.

b) Judicial time spent on the question must be proportionate to the maximum level of the fee award. The parties should be prepared to make any submissions on fees at the hearing orally or in writing. In the absence of attendance at the hearing the parties cannot expect the judge to give a further opportunity to make submissions on fees.

9. Brief reasons should be given for a fee award decision.



The Hon Mr Justice Blake



Michael Clements

Chamber Presidents
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