

GUIDANCE NOTE ON UNREPRESENTED APPELLANTS WHO DO NOT UNDERSTAND ENGLISH

The reductions in Legal Aid which came into effect in April 2004 have created a significant increase in the number of unrepresented appellants. Compounding the concerns of unrepresented appellants who do not understand English is the imminent implementation of the single tier appeal system, with the need for high quality decisions.

The proceedings must be conducted in a manner fair to both parties. What is procedurally necessary to ensure the higher standard of fairness is “essentially an intuitive judgment”. It will be a judgment call for the adjudicator to make dependent on the facts of the individual case; it is a matter of judicial instinct. A useful question to ask is whether you are satisfied that an informed, independent representative would think the proceedings had been fair.

The adjudicator must take all steps necessary to ensure that the parties have been able to put their respective cases fairly in a way that is appropriate.

Sometimes this will involve reading out a witness statement and/or the interview notes and/or the reasons for refusal letter so that the Court interpreter can translate to the appellant. Much will depend on whether the unrepresented appellant recollects the contents of the documents and to what extent their contents are relevant to the appellant’s case. Sometimes it will be necessary to translate in full; sometimes only in summary. The Record of Proceedings and the determination should reflect this.

Sometimes an adjournment may be necessary to ensure a just disposal of the appeal. However, I would expect this to be a last resort and in the majority of cases ad hoc translations at the hearing should be satisfactory for the purposes. It is only where the appeal cannot otherwise be determined justly should an adjournment be granted.

Preparation of the appeal is particularly important when an appellant is unrepresented as familiarity with the appeal is essential for a fair disposal of the appeal. Summaries of the objective evidence may be prepared in advance to be translated to the appellant in Court.

Where there is a likelihood that an adverse credibility finding is to be made because of internal inconsistencies in the appellant’s case, the adjudicator should draw those discrepancies to the appellant’s attention and afford the appellant the opportunity to respond.

At the end of the hearing the appellant should be in a position whereby he has understood what has been said at the hearing and also understood any documents which will be formative in deciding the appeal. The appellant must leave the Court room feeling he has had a fair hearing.

It is impossible to give guidelines that will cover every eventuality and indeed it would be wrong to be over prescriptive. At the end of the day it will be a judgment call for the adjudicator at the hearing to decide what is necessary to ensure that the appellant has not been disadvantaged by his lack of representation and his lack of proficiency in English.

MISS E ARFON-JONES
Deputy Chief Adjudicator

12 August 2004