

ADJUDICATOR GUIDANCE NOTE

DELAYED PROMULGATIONS

1. A practice has developed over time whereby on occasions adjudicators undertake to delay promulgation of their determinations for a period to enable representatives to submit further documentary evidence and/or written legal submissions.
2. There have been many instances where the adjudicator has thereafter concluded the determination of the case ignorant of the fact that the representatives have sent the relevant documentation to the IAA. The administrative systems, sadly, given the huge volume of work are not robust enough for us to be confident that papers received are passed through to the adjudicator promptly. The adjudicator will also have the file. There is rarely anything on IRIS showing a direction has been made that documents are to be submitted by a set date. It is complicated for the post openers to assign individual correspondence to adjudicators rather than to files, which is the routine procedure. Representatives tend to fax in submissions at the very last moment of the given timescale which creates further problems for passing the papers on in a timely way.
3. The practice creates further difficulties when the other party has not been afforded the opportunity to respond to any new evidence or to legal submissions. It encourages a practice of repeated pleadings which will unnecessarily protract the proceedings. There are a good number of successful applications for leave to appeal to the Tribunal when documents have not, for whatever reason, reached the adjudicator prior to the promulgation of the determination. All of this results in the determination being set aside and the case being re-listed for hearing creating further work and delay.
4. It is incumbent on both parties to be ready to proceed to conclusion on the hearing date. Skeleton arguments should have been produced prior to the hearing; it should not arise that legal submissions are not before the adjudicator at the hearing. There must be finality in litigation and the parties have a duty to be fully ready to conclude the hearing on the hearing date. It ought to be a rare case that cannot conclude on the hearing date.

5. Adjudicators are therefore asked to do all they can to ensure cases conclude on the hearing date and only in the most exceptional of cases to agree to the submission of post hearing submissions or documents or evidence prior to the determination being written. If this is unavoidable it is vital that a formal direction is made in writing detailing what steps are to be taken by the representatives in relation to the submissions. In particular the direction must instruct representatives to highlight the urgency of the documentation and the need to ensure it gets to the named adjudicator promptly when they send it in to the IAA.
6. A copy of the directions in writing must be given on the hearing date to the parties and to the usher so it can be entered on IRIS.

**His Honour Judge Henry Hodge OBE
Chief Adjudicator
February 2003**