



# Senior President of Tribunals

## Guidance on appeals: concurrent applications under the Hague Convention for the return of a child who is an appellant in or a family member of an appellant in a protection appeal

Scope: This guidance applies **only** to those appeals where an application under the Child Abduction and Custody Act 1985 (“the 1985 Act”) has been made in respect of a child who is an appellant or family member of an appellant in a protection appeal brought under the Nationality, Immigration and Asylum Act 2002. It **does not** apply to appeals under that Act where there are any other types of family law proceedings.

Purpose: to ensure that any protection appeal in which there is an overlap with proceedings under the 1985 Act is case-managed and decided as quickly and efficiently as possible.

### Definitions

1980 Hague Convention	Convention on the Civil Aspects of International Child Abduction concluded on 25 October 1980
Child Abduction Act	Child Abduction and Custody Act 1985
child abduction proceedings	Proceedings brought under the Child Abduction Act
FtTPR	Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014
Hague Convention linked appeal	Protection appeal in which there are concurrent proceedings under the Child Abduction Act - the subject of this guidance
protection appeal	Appeal under section 82 (1) of the Nationality, Immigration and Asylum Act 2002 on asylum, humanitarian protection or human rights grounds

the Tribunal	The First-tier Tribunal (Immigration and Asylum Chamber) or the Upper Tribunal (Immigration and Asylum Chamber), whichever is seized of the appeal at the time.
UTPR	Tribunal Procedure (Upper Tribunal) Rules 2008

## Introduction

- 1 The Convention on the Civil Aspects of International Child Abduction concluded on 25 October 1980 ("the 1980 Hague Convention") was incorporated into domestic law by the Child Abduction and Custody Act 1985 ("the Child Abduction Act") which also extends to Scotland and Northern Ireland. The 1980 Hague Convention's focus is the wrongful removal or retention of a child by one parent (the taking parent) to or in a country other than that of the child's habitual residence and of the difficulties then encountered by the left-behind parent in procuring the child's return. The 1980 Hague Convention (and the Child Abduction Act) provide a means by which the left-behind parent can secure the swift return of children wrongfully removed from their home country, so that they can return to the place which is properly their "home", and any welfare dispute can be decided in the courts of that country, according to the laws of that country and in accordance with the evidence which will mostly be there rather than in the country to which they have been removed.
- 2 Hague Convention applications are determined summarily. Oral evidence is rarely heard and the court carries out a broad evaluation of the evidence rather than detailed fact-finding.
- 3 The Hague Convention provides several defences to a return order. Of particular relevance in an immigration context is Article 13(b) – 'there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.'
- 4 As noted in G v G [2020] EWCA Civ 1185 there is a tension between the objective of the 1980 Hague Convention expeditiously to return a wrongfully removed or retained child to his home jurisdiction and the principle of the Refugee Convention that refugees should not be expelled or returned to a country where they may be persecuted.
- 5 In the Supreme Court, reported as G v G [2021] UKSC 9, Lord Stephens noted the need for proactive practical steps to be taken to instil urgency and priority into the protection appeal proceedings and to co-ordinate both sets of proceedings. These are set out at paragraphs [162] to [170] which should be read

in conjunction with this guidance. The Secretary of State for the Home Department (“SSHHD”) has proposed an expedited process for determining asylum claims and has established a specialist protection team to which claims will be assigned as soon as it becomes apparent that there is an overlap with child abduction proceedings.

- 6 Practice Guidance has been issued in the Family Division and the Court of Session concerning cases involving both child abduction proceedings and protection claims and appeals, and that guidance should be read carefully, so that the approach of the High Court and the Court of Session is fully understood.

### **Anonymity**

- 7 The parties to child abduction proceedings will be anonymised in the Family Division or the Court of Session. The First-tier Tribunal and the Upper Tribunal will anonymise such parties in protection appeals to ensure such orders are effective and to ensure compliance with section 97(2) of the Children Act 1989, or the equivalent provisions under section 170 of the Children (Northern Ireland) Order or section 182 of the Children’s Hearings (Scotland) Act 2011. It may be sensible, as is Family Court practice to give random letters rather than to use the initial letters of the child or parent’s actual names and to omit (so far as is possible) the name of the country. As a matter of general practice in the First-tier Tribunal, an anonymity order or direction will be made at the inception of protection appeals and in many cases concerning children. Guidance is contained in Presidential Guidance Note No. 2 of 2022 and may be found here [Presidential Guidance on Anonymity Orders and Directions Regarding the use of Documents and Information in the First-tier Tribunal \(Immigration and Asylum Chamber\) \(judiciary.uk\)](#)
- 8 That said there may be a request from the High Court or the Court of Session to vary or lift an anonymity direction given in respect of the protection appeal, as a consequence of disclosure or otherwise. Such a request will need to be considered promptly, on notice to the parties who will have the opportunity to make representations, and any directions or orders made by the Tribunal must sent to the High Court or the Court of Session at the same time as they are sent to the parties.

### **Duties of the parties**

- 9 All parties are reminded of the overriding objective and rule 2 of FtTPR and UTPR; and the duty under rule 2 (4) to help further the overriding objective and to help the tribunal. Those duties and the need for swift, effective communication are all the more important where, as here, urgency, efficiency and the prioritising of relevant appeals is vital as is the ability to have close liaison between the Tribunal and the High Court or the Court of Session. That can be achieved only by swift, effective and proactive communication between all those involved in Hague Convention linked appeals.

- 10 To that end, parties are under a continuing obligation to inform the Tribunal and the other parties if they become aware of 1985 Act proceedings affecting a child who is an appellant under the Nationality, Immigration and Asylum Act 2002 or who is a family member of such an appellant, if necessary, obtaining the prior authorisation of a court dealing the child abduction proceedings.
- 11 The parties are also reminded that in the context of Hague Convention linked appeals, a failure to act efficiently and promptly may well fall to be treated as unreasonable conduct for the purpose of applications for costs.

### **Notifying the Tribunal**

- 12 Where child abduction proceedings are known about before an appeal notice is provided the party or representative **must**:
  - send a covering letter or email with the appeal, stating that it is a Hague Convention linked appeal;
  - provide details of the representatives in the protection appeal and the child abduction proceedings;
  - state clearly in the grounds of appeal that this is a Hague Convention linked appeal;
  - make an application for anonymity using the correct form
- 13 Where child abduction proceedings are commenced once an appeal is pending the party or representative who learns of it must:
  - inform the relevant Tribunal (and the other party) **within 48 hours** and make an application for anonymity
  - Inform any representative known to be acting in the child abduction proceedings that there is a pending protection appeal, giving the relevant file reference number and contact details for the relevant tribunal and of the need to bring this to the attention of the court considering the child abduction proceedings within 48 hours.
  - The point of contact for the First-tier Tribunal will be the Resident Judge at the hearing centre to which the statutory appeal has been allocated; for the Upper Tribunal it will be [UTIAClondonlawyers@justice.gov.uk](mailto:UTIAClondonlawyers@justice.gov.uk)

### **Action to be taken by the Tribunal**

- 14 Once notified of child abduction proceedings in connection with a protection appeal, and once initial checks have been made regarding details of the representatives, payment of the required fee and the grounds of appeal relied upon, then the appeal will be assigned to a dedicated Legal Officer who, in liaison with the Resident Judge responsible for the relevant hearing centre, will

arrange for a named salaried judge to manage the appeal, working with the dedicated Legal Officer.

- 15 The named judge will take any necessary case management steps, make appropriate directions and will normally be the judge (or one of a panel of judges) who hears the appeal substantively. The named judge or the relevant Resident Judge will be the judicial point of contact for any communication with the judge in the High Court or Court of Session who has charge of the child abduction proceedings.
- 16 The Resident Judge will assist as required and oversee communication with the High Court or Court of Session.

### **Action to be taken by the Secretary of State for the Home Department**

- 17 To ensure a prompt, informed and consistent response to directions made by the relevant Tribunal, the SSHD must ensure that conduct of the appeal be given to a dedicated case owner or presenting officer, who will provide appropriate liaison with the specialist protection team. The identity of that person must be made known to the relevant Legal Officer to facilitate communication.
- 18 It was proposed in G v G [2021] UKSC 9 at [166] that as soon as it is appreciated that there are related child abduction proceedings and a protection claim it will be desirable for the SSHD to be requested by the court considering the child abduction proceedings to intervene in those.
- 19 It was also proposed that the relevant Tribunal must in all cases establish whether such a request has been made, then the SSHD must inform the Tribunal within 5 working days if such a request has been made.
- 20 If a request has been made, then the local case owner or presenting officer must inform the Tribunal whether the Government Legal Department (“GLD”) or the Office of the Advocate General (“OAG”) is acting or intending to act for the intervenor.
- 21 If the SSHD has intervened in the child abduction proceedings, then it is desirable that the GLD or OAG act for her in the protection appeal to ensure consistency, speed and good communication between all concerned,

### **Case management**

- 22 In order to ensure substantive listing of the appeal on the first available date, a case management hearing will be listed before a judge within 28 days after the appeal is lodged.

23 In preparation for the case management hearing, and to ensure that proper and comprehensive directions for the conduct of the substantive appeal can be issued with the minimum of delay, the parties must provide, **at least 3 working days beforehand:**

- confirmation of the details of the representatives in the protection appeal and the child abduction proceedings;
- confirmation that the International Family Justice Office or the Scottish International Family Justice Office is available to act as a conduit in communication between the High Court or the Court of Session and the Tribunal;
- a list of dates to avoid in respect of representatives, appellants or witnesses;
- a list of witnesses of fact, whether they require an interpreter and if so in which language, as well as their contact details and their location;
- a list of any expert witnesses;
- if a witness is located abroad, confirmation of any steps taken or proposed to be taken by the parties to comply with the guidance given in Agbabiaka (evidence from abroad, Nare guidance) Nigeria (Rev 1) [2021] UKUT 286 (IAC), including any necessary enquiries with the Taking of Evidence Unit of the Foreign, Commonwealth and Development Office in order to ascertain whether the government of the foreign State has any objection to the giving of evidence to the Tribunal from its territory;
- in the case of vulnerable witnesses falling within scope of the joint Presidential Guidance Note No 2 of 2010, any adjustments or special measures required as a result;
- if a party proposes that an intermediary or a Litigation Friend is required, the steps taken or required to be taken to ensure that any necessary arrangements are in place no later than 28 days before the substantive hearing;
- the extent of the documentary evidence relied upon and directions to ensure that such evidence is filed online in electronic form, together with the parties' draft timetable for jointly preparing a single, agreed electronic bundle; any further directions that may be required to ensure that the correct PDF format is used (see below on disclosure and sharing of documents);
- in view of the concurrent High Court or Court of Session proceedings and the likelihood that in most cases a timetable will have been agreed or ordered in those proceedings before the protection appeal has begun, it will generally be necessary to make express provision for the expedition of the appeal. For this reason, one of the earliest case management steps required will be the obtaining of dates to avoid from

the parties and their representatives and early submissions regarding the appropriate mode of hearing (whether face to face or remote and if the former, whether any witnesses will join remotely, so as to give rise to a hybrid hearing).

- 24 Given the urgency of Hague Convention linked appeals and bearing in mind what is stated at [9] above, the parties are expected to agree as much of the above as possible, including issues relating to disclosure and sharing of documents prior to the case management hearing.
- 25 At the case management hearing, the Tribunal will fix a date for the substantive hearing, and will give directions and a timetable in accordance with model directions for use in online appeals issued by the President and contained in Practice Statement No 2 of 2020 which may be found here [Practice Direction from Senior President of Tribunals for the Immigration and Asylum Chamber of the First-tier Tribunal \(FtT IAC\) and Practice Statement from FtT IAC President Michael Clements - Courts and Tribunals Judiciary](#) for:
- the appellant to provide an Appeal Skeleton Argument;
  - the respondent to provide an Effective Review;
  - the filing of an agreed statement of issues requiring determination by the judge at the substantive hearing;
  - notification by the parties of any directions or orders made in the High Court in the child abduction proceedings;
  - the mode of hearing, whether face to face hearing, a remote hearing or a hybrid hearing and any special arrangements required in the light of the vulnerability of any of the witnesses or the presence of an intermediary or Litigation Friend.

### **Disclosure and documents**

- 26 It is likely that documentary evidence in a protection appeal where there are concurrent child abduction proceedings will be substantial. Following Lord Stephens's proposal in G v G at [169] that the documents in the child abduction proceedings should ordinarily be made available to the SSHD, the Tribunal should consider carefully whether those documents should in turn be made available in the protection appeal.
- 27 In making any orders as to disclosure, the Tribunal must bear in mind that the High Court or the Court of Session is likely to have considered whether documents provided to the SSHD in support of the protection claim should be the subject of disclosure into the child abduction proceedings, subject to the principles set out in Re H (A child) (Disclosure of Asylum Documents) [2020] EWCA Civ 1001, [2021] 1 FLR 586. Any orders made as a result must be taken into account.

- 28 Appeals within scope of this guidance will be brought online by means of the MyHMCTS process. This will ordinarily present no difficulty in relation to large bundles, but the dedicated Legal Officer must discuss with the parties, at least 5 working days prior to the deadline for the service of a bundle, whether any limit in the size of bundles to be uploaded to MyHMCTS will be exceeded. If this is so, a direction will generally be required to provide for filing and service by means of encrypted memory sticks, with passwords provided separately. The Legal Officer must only make such arrangements in consultation with the judge allocated to hear the case or the relevant Resident Judge.

### **Promulgation of the decision**

- 29 Once a decision is uploaded to MyHMCTS, promulgation and service of the decision happens automatically which means that typographical or similar errors / anonymity concerns cannot easily be corrected. Given the complexity of Hague Convention related appeals, and the dangers of breaching anonymity orders, the Tribunal will, in line with the procedure adopted in the High Court, circulate an embargoed draft decision to the parties' representatives for errors and omissions to be notified to the judge before promulgation. The parties will usually be given 72 hours in which to do so.
- 30 A copy of the promulgated decision **must** be sent to the High Court **on the same day as it is uploaded to MyHMCTS**. The dedicated Legal Officer will be required to alert the First-tier Tribunal's administrative officers so that it will be clear that a decision has been promulgated and is not still awaited from the judge as a reserved decision.

### **Communication**

- 31 Given the importance of communication with the High Court or the Court of Session, it is vital that copies of any directions or orders made by the Tribunal in Hague Convention linked appeals must, at the same time they are sent to the parties, be sent to the High Court or the Court of Session by means of the International Family Justice Office or the Scottish International Family Justice Office, or (if that is impractical) by sending copies to the associate or clerk assigned to the judge in the High Court or Court of Session who has charge of the child abduction proceedings.
- 32 **Any communication to the Tribunal by email or by letter relating to an appeal covered by this guidance must state in the subject line that it is a Hague Convention related appeal.**

### **Appeals to the Upper Tribunal**

- 33 Any application for permission to appeal to the Upper Tribunal must be referred to the relevant Legal Officer or relevant Resident Judge who will ensure that the



application is decided within five working days. The decision on permission **must** state that it is a Hague Convention linked appeal.

- 34 If permission to appeal is granted, the relevant legal officer must send a copy of the decision and any relevant contact information to [UTIAClondonlawyers@justice.gov.uk](mailto:UTIAClondonlawyers@justice.gov.uk) who, in liaison with the Principal Resident Judge, will issue case-specific directions and fix a hearing date no more than 28 days later. Unless directions indicate to the contrary, the parties will prepare for that appeal on the basis that if the Upper Tribunal finds an error of law, it will proceed to remake it on the same day.
- 35 If permission to appeal is refused, the relevant legal officer must send a copy of the decision and any relevant contact information to [UTIAClondonlawyers@justice.gov.uk](mailto:UTIAClondonlawyers@justice.gov.uk) to ensure that any renewed application, once received, is put before a judge on the next available date. If permission is granted, then the procedure set out at [34] will be followed.
- 36 In the unlikely event of child abduction proceedings coming to the attention of a party while an application for permission is pending, or once permission to appeal to the Upper Tribunal has been granted, then the guidance at [10] will apply, with the additional requirement that an email is sent to [UTIAClondonlawyers@justice.gov.uk](mailto:UTIAClondonlawyers@justice.gov.uk) who will then (as appropriate) follow the procedure set out at [34] or [35] above. If permission has already been granted, then a case management hearing will be listed, following the procedure set out at [22] to [25] above.
- 37 The Upper Tribunal will ensure that relevant directions and orders, and a copy of its determination are sent to the High Court or the Court of Session at the same time as they are sent to the parties.