Senior President of Tribunals

Practice Direction of the Immigration and Asylum Chamber of the First-tier Tribunal

Contents

PART 1
GUIDING PRINCIPLES

1. <u>The issues based approach and procedural rigour</u>

1.1. The Overriding Objective of the Tribunal is that cases are dealt with fairly and justly. A thread that runs through the entirety of the appeals process in the Immigration and Asylum Chamber of the First-tier Tribunal (the "Tribunal") is the requirement that the parties identify, articulate, agree and then focus upon the principal controversial issues, or the disputed issues, thereby adopting an issues-based approach to the appeal[1]. This furthers all aspects of the Overriding Objective by:

(a) allowing appropriate resources, both of the Tribunal and the parties, to be allocated in proportion to the nature and extent of the issues in dispute;

(b) ensuring that the right people are enabled to participate in the case;

(c) avoiding unnecessary delay; and

(d) ensuring that both parties can fairly and proportionately present evidence and submissions relevant to the disputed issues.

[1] *Lata (FtT: principal controversial issues)* [2023] UKUT 00163 and *TC (PS compliance – "issues based" reasoning) Zimbabwe* [2023] UKUT 00012 (IAC)

1.2. The parties must ensure they conduct proceedings with procedural rigour.[2] The Tribunal will not overlook breaches of the requirements of the Procedure Rules[3], Practice Directions, Practice Statements and failures to comply with directions issued by the Tribunal.

1.3. The disputed issues represent the parameters, or scope, of the appeal and will operate as the foundation and structure for all judicial decisions. Subject to '*Robinson*[4] obvious' matters and the need for extra care when litigants in person are involved in proceedings, judges should not be expected to infer issues which have not been clearly identified and articulated by the parties. The Tribunal will not tolerate a rolling consideration of issues and will not permit the issues to evolve at will for procedural advantage.

1.4. This Practice Direction states important principles on the whole range of substantive and procedural decision-making, including the giving of written reasons. It must always be read and applied having regard to the particular nature of the decision in question and the particular circumstances in which that decision is made.

1.5. This Practice Direction applies to appellants without representatives in the same way as it does to parties represented by lawyers. However, the Tribunal recognises the difficulties faced by appellants who are preparing and presenting their own appeal. The Tribunal will ensure that they are treated fairly and enabled to explain their case. Judges should take account of the Equal Treatment Bench Book. The Bench Book provides guidance on a Tribunal's duty to litigants in person, who are referred to in this Practice Direction as appellants in person. Account will be taken of the particular needs of appellants in person when dealing with the management of the appeal and at the hearing.

1.6. References to maximum page numbers of bundles of documents referred to in this Practice Direction require the text to be in no less than size 12 font with 1.5 line spacing.

1.7. This Practice Direction does not apply to applications for immigration bail.

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[2] *R (Spahiu) v Secretary of State for the Home Department* [2018] EWCA Civ 2604, [2019] 1WLR 1297, [2]; *R (Talpada) v Secretary of State for the Home Department* [2018] EWCA Civ 841, [67]; *R (Dolan) v Secretary of State for Health and Social Care* [2020] EWCA Civ 1605, [2021] 1 WLR 2326, [116]-[120]; and *R (AB) Chief Constable of Hampshire Constabulary* [2019] EWHC 3461 (Admin), [108].

[3] Tribunal Procedure (First-tier Tribunal)(Immigration and Asylum Chamber) Rules 2014 (as amended).

[4] *R v SSHD, Ex parte Robinson* [1997] 3 W.L.R. 1162.

PART 2
THE APPEAL PROCESS

2. Overview of the appeals process

2.1. The appeal process will normally involve:

(a) the appellant providing a notice of appeal in accordance with rules 19 to 21 of the Procedure Rules;

(b) the Tribunal reviewing the validity of the appeal and territorial jurisdiction;

(c) the respondent providing a bundle in accordance with rules 23 and 24 of the Procedure Rules; and

(d) the appellant being directed to provide a bundle and an explanation of their case or, where represented, a skeleton argument in accordance with rule 24A of the Procedure Rules;

(e) the respondent providing a meaningful review of the decision under appeal;

(f) a hearing before a judge;

(g) the judge making a decision, either at the hearing or in writing after the hearing, subject to rule 29; and

(h) where relevant, an application for permission to appeal to the Upper Tribunal.

2.2. The process may be modified or described differently for appellants in person but will generally involve similar steps to those set out above.

2.3. Each of these steps must be taken in accordance with the Procedure Rules, this Practice Direction and any specific directions given in the particular appeal.

2.4. Any case management function that has been delegated by the Senior President of Tribunals to a Legal Officer[5], in respect of which the President[6] has also given their authorisation, will normally be exercised by a Legal Officer, subject to the right of a party to apply for any decision made by a Legal Officer to be considered afresh by a judge under rule 3(4).

[5] "Legal Officer" means a member of staff appointed under section 40(1) of the Tribunals, Courts and Enforcement Act 2007 or section 2(1) of the Courts Act 2003 and designated as a Legal Officer by the President.

[6] "The President" means the President of the Immigration and Asylum Chamber of the First-tier Tribunal.

2.5. In exercising their powers, the overarching aim of Legal Officers is to progress cases to a point where a substantive decision can be made in the appeal compatibly with the Overriding Objective.

3. Starting an appeal

3.1. Appeals to the Tribunal filed by a legal representative must be started using the online procedure (accessed through MyHMCTS) unless it is not reasonably practicable to do so.

3.2. Appeals to the Tribunal by appellants in person may be started using the online procedure accessed through gov.uk. Alternatively, an appellant in person can start an appeal by completing and submitting the appropriate form available from the gov.uk website.

3.3. If an appeal has been started using the online procedure, any application for permission to appeal under rule 33 (application for permission to appeal) should also be made using MyHMCTS. In all other cases, the application for permission to appeal must be made by completing and submitting the appropriate form available from the gov.uk website.

3.4. If MyHMCTS is not used to start an appeal, the legal representative must clearly state why it is not reasonably practicable to do so. If the Tribunal agrees, the appellant may proceed without using MyHMCTS. In such a case, the notice of appeal must set out the grounds of appeal relied upon.

3.5. Where the Tribunal does not accept an appeal outside MyHMCTS from a legal representative, the appellant must provide the Tribunal with the following information when making any consequential application to extend the time for bringing an online appeal:

(a) the date when the appeal outside MyHMCTS was provided and its appeal number; and

(b) the date when the Tribunal declined to accept it.

3.6. Upon receipt of a notice of appeal the Tribunal will take steps in the order in which they appear below:

(a) decide which territorial jurisdiction (England and Wales, Scotland or Northern Ireland) applies and whether there is a right of appeal against the decision to which it relates;

(b) decide whether the appeal has been brought in time, and, if not, whether to allow an extension of time; and

(c) issue any directions.

4. Linked appeals[7] and decisions without a hearing

4.1. If the appellant is aware that their appeal is based on the same facts as another appeal, for example an appeal involving a family member, they must inform the Tribunal immediately so that the Tribunal can consider whether the appeals should be linked. The appellant should provide to the Tribunal the reference number or notice of that appeal. If an appeal becomes linked after the appeal has been filed at the Tribunal, the appellant must provide to the Tribunal the reference number or numbers of any linked appeals as soon as reasonably practicable.

4.2. An appellant may indicate in writing, either when filing the appeal or during the appeal, that they wish for it to be decided without a hearing. If an appellant does so, the procedure in this Practice Direction and rule 25 of the Procedure Rules will apply and the result may be that there will be no hearing. Where a preliminary view is taken that there will not be a hearing, the Tribunal will list a date on which the papers will be considered for making a substantive decision. The Tribunal will proceed to decide the appeal on or after that date unless the respondent objects to this in writing prior to that date. The President may issue Practice Statements setting out directions which shall ordinarily apply for appeals brought by the different processes set out above.

PART 3
APPEAL PROGRESSION, EVIDENCE AND WRITTEN SUBMISSIONS

5. Case Management

5.1. The general principles set out in Part 1 above shall apply to case management and the decisions made by the Tribunal. The parties will approach the steps required by case management with procedural rigour.[8] This will ensure that appeals may be listed for substantive decision without delay. Failure, without good reason, to comply with case management directions is a serious matter, which undermines the good administration of justice and is inconsistent with the Overriding Objective. These principles apply whether case management is conducted by judges or by Legal Officers.

5.2. In relation to directions issued (6.1(d) below), in the event of non-compliance, the Tribunal will make use of its power under rule 6(2) of the Procedure Rules, which will in turn include requiring failure to be remedied and the imposition of sanctions as appropriate.

5.3. Sanctions for failing to comply with case management directions may include the exclusion of evidence in the event of non-compliance in

[7] "Linked appeal" means an appeal where the appeal of one or more appellants raise common issues.
[8] *Maleci (non-admission of late evidence)* [2024] UKUT 00028 (IAC). In *SSHD v TC* [2023] UKUT 164 (IAC), the Upper Tribunal emphasised the need for procedural rigour at every stage of the proceedings.

appropriate cases and subject to the Tribunal considering such action "just", in accordance with rule 6(2). The assessment of what is just will take into account all relevant principles[9], including the seriousness or significance of the failure to comply with rules or directions, any explanation offered for the failure or good reason for it and, as a third stage, an evaluation of all the circumstances of the case, to enable the Tribunal to deal justly with the application.

5.4. In assessing whether to grant relief from a sanction imposed by way of earlier directions, the judge dealing with the application for relief will consider the matter afresh, applying all relevant principles and considerations[10].

5.5. Any appeal using the online procedure must be managed through the relevant online portal. This means that parties must make any applications (including applications for permission to appeal) and the Tribunal will make any directions through the online portal (rather than by email, post or fax). Parties should check the online portal to see the status of their case and following any notification about activity in their case. They should follow any guidance on using the system as published from time to time.

6. Interim Hearings

6.1. The Tribunal will hold an interim hearing whenever it considers it necessary to do so in order to further the Overriding Objective. Such a hearing will be of great importance in identifying the disputed issues and ensuring that procedural rigour is observed. Parties or their representatives are expected to attend these hearings. The Tribunal may order a hearing for the purpose of:

(a) identifying and/or narrowing the disputed issues, and consequentially the evidence necessary to decide the appeal;

(b) dealing with preliminary issues;

(c) deciding applications made by either party;

(d) giving, and overseeing compliance with, case management directions, and any appropriate indication as to the sanctions which may be applied in the event of non-compliance with directions;

(e) deciding the mode of hearing;

(f) fixing a date for the final hearing[11], or a further interim hearing which may, on notice, be converted to a final hearing; and

(g) any other matter.

[9] *SS (Congo) v SSHD* [2015] EWCA Civ 387.
[10] *SSGA (disposal without considering merits; rule 25) Iraq*.
[11] "Final hearing" means a hearing at which the appeal is expected to be allowed, dismissed or brought to an end in some other way.

6.2. An interim hearing is a hearing for the purposes of rule 25 of the Procedure Rules. A judge may make a decision which disposes of the proceedings following an interim hearing if it is in the interests of justice to do so. Where it is considered appropriate, fair and just to do so, the Tribunal may direct that any witnesses the parties rely upon attend an interim hearing. This would enable a judge to make a decision on the merits after hearing oral evidence.

6.3. At the end of an interim hearing the Tribunal will also give to the parties an Order containing written confirmation of all relevant decision-making and directions as set out in paragraph 6.1 above, and also:

(a) any issues that have been agreed at an interim hearing as being relevant to the appeal; and

(b) any concessions made by a party.

7. Bundles, Appeal Skeleton Arguments and Respondent reviews

General requirements for bundles

7.1. Any bundles provided by the parties must be prepared with the disputed issues in mind and in accordance with the requirements of the Procedure Rules. Subject to the Procedure Rules, if there is doubt whether material or evidence is relevant to the disputed issues, it should not be included in the bundle. Representatives must be prepared to justify the inclusion of all materials in the bundle and to explain how they relate to the disputed issues.

7.2. Any bundle prepared by a legal representative and the respondent must be in a digital, indexed, bookmarked and paginated format where every page is A4 (unless a larger page size is required for good reasons). Any documents with typed text must be formatted so that characters can be recognised by the software (this function is known as Optical Character Recognition ('OCR')) unless doing so garbles the text.

Respondent bundle

7.3. In all appeals, the Tribunal will direct the respondent to provide a bundle of documents in accordance with either rule 23 or rule 24 (as applicable) of the Procedure Rules. The bundle should also include any previous decisions of the Tribunal or the Upper Tribunal (Immigration and Asylum Chamber) relating to the appellant and any evidence or material considered to be relevant to the disputed issues as then understood.

7.4. If the respondent fails to provide a bundle in accordance with the Procedure Rules, the Tribunal may direct the appellant to provide the appeal skeleton argument ("ASA"), or explanation of their case, and evidence in any event.

Legally represented appellant – ASA and appellant's bundle

7.5. In accordance with rule 24A of the Procedure Rules, where the appellant is legally represented, the Tribunal will direct the appellant to provide an ASA and bundle.

7.6. The ASA should be no more than 12 pages of numbered paragraphs and should contain three sections:

(a) a brief summary of the appellant's factual case;

(b) a schedule of the disputed issues;

(c) the appellant's brief submissions on each of those issues, which should state why the appellant disagrees with the respondent's decision with sufficient detail to enable the reasons for the challenge to be understood, and must:

(i) be concise;

(ii) engage with the decision letter under challenge;

(iii) not include extensive quotations from documents or authorities;

(iv) identify but not quote any more than necessary from any evidence or principle of law that will enable the basis of challenge to be understood; and

(v) cross-refer to any country information evidence schedule (see below).

7.7. An ASA that exceeds 12 pages must include an application for permission to rely upon it with concise reasons as to why it must be longer than 12 pages.

7.8. The name of the author of the ASA and date it was prepared must be included in it.

7.9. The bundle should include any additional evidence or material which is not included in the respondent's bundle. This applies even where no respondent's bundle has been provided. Any evidence must be relevant to the disputed issues.

Appellants in Person

7.10. Where the appellant is not legally represented, the Tribunal will make directions in accordance with 1.5 above for the appellant to explain their case and provide any evidence or material in support of their case that is not in the respondent's bundle.

Respondent's review

7.11. The respondent must provide a review in accordance with rule 24A(3) of the Procedure Rules, within 14 days of receipt of the bundle and ASA or the appellant's explanation of their case. The review must:

(a) not exceed 6 pages or provide reasons for an application for permission to rely upon a review exceeding 6 pages;

(b) not contain standard or pro-forma paragraphs;

(c) explain whether the respondent agrees that the schedule of the disputed issues is correct and, if not, the correct list of disputed issues, including whether there are any further issues that the respondent wishes to raise;

(d) the respondent's brief submissions on each of those issues including whether the respondent opposes or accepts the appellant's position on each issue, with cross-referencing to paragraphs in the decision under appeal, pages in the respondent's bundle, any country information evidence schedule, and/or any additional evidence relied upon;

(e) specify which, if any, witnesses the respondent intends to cross-examine; but if the respondent does not intend to cross-examine a witness, the respondent must set out any objections to that witness's statement being read by the judge; and if a witness provides a further witness statement, they should attend the hearing to give oral evidence, unless the Tribunal otherwise directs;

(f) address whether the appeal should be allowed on any ground if the appellant and/or their key witnesses are found to be broadly credible according to the applicable standard of proof;

(g) identify if the respondent is preparing to withdraw the decision or part of it; and

(h) address the question of whether the appeal can be resolved without a hearing.

7.12. The name of the author of the review must be provided.

Post-review evidence

7.13. Any party providing further evidence after the review should include with that evidence a written explanation of why it was not provided earlier in the appeal process. Further evidence provided by the Home Office or a legal representative must be provided in a bundle. Parties should not reproduce any evidence which has already been provided unless a direction has been given providing for this to be done. The filename and first page should include a number and date so that the total number of bundles relevant to

the case can be identified, for example "Appellant's Second Bundle provided on 14 February 2024".

7.14. Where any evidence is provided later than 5 working days prior to the hearing, including on the day of the hearing, the judge must decide as a preliminary matter whether to admit that evidence at the hearing. If an application is made to admit evidence which is ruled inadmissible, the judge must give specific reasons for the exclusion of that evidence in any written decision. If it is decided to admit the evidence, but the judge considers that it would be unfair to proceed to hear the appeal on that day, the Tribunal should consider the issue of unreasonably incurred or wasted costs[12] for the adjourned hearing. If appropriate, directions should be given in accordance with the Presidential Guidance Notes on costs of 2015 and 2018.

8. Witness statements

8.1. If an appellant seeks to rely on testimonial evidence, witness statement(s) from any such witness(es) must be provided. Witness statements should be included in bundles as set out above.

8.2. A witness statement should be capable of standing as the totality of the evidence-in-chief of the person giving that statement.

8.3. A witness statement may be added to by the provision of a supplementary statement provided that the supplementary statement is produced and served in accordance with any directions given in the appeal.

8.4. Only where there is good reason and with the permission of the judge, will a witness be permitted to provide additional evidence-in-chief.

Body of witness statement

8.5. The witness statement must, if practicable, be in the intended witness's own words. The statement need not be in a language that the witness understands. If drafted in English and this is a language not understood by the witness, it must include a signed and dated attestation by both the witness and the person who interpreted it that the statement has been read back to the witness in a language they understand and that it accurately reflects their evidence.

8.6. The statement should be expressed in the first person and should also state:

(a) the full name of the witness,

(b) their place of residence or, if they are making the statement in their professional, business or other occupational capacity, the address at which they work, the position they hold and the name of their firm or employer;

(c) their occupation, if they have one;

[12] 'Expenses' in Scotland.

(d) the fact that they are a party to the proceedings or are the employee or relative of such a party if that is so;

(e) the process by which it has been prepared, for example, face-to-face, over the telephone, and/or through an interpreter; and

(f) the date on which it was signed.

8.7. A witness statement must indicate:

(a) which of the statements in it are made from the witness's own knowledge and which are matters of information or belief, and

(b) the source for any matters of information or belief.

8.8. An exhibit or document that is referred to within the witness statement should be verified and clearly identified by the witness, and should remain separate from the witness statement.

8.9. Where a witness refers to an exhibit or document they should state "I refer to the [description of document] at page [x] of [name of bundle]…".

Statement of Truth and Interpreter Attestation

8.10. A witness statement is the equivalent of the oral evidence which that witness would, if called, give in evidence. It must include a statement by the intended witness in their own language that they believe the facts in it are true.

8.11. To verify a witness statement the statement of truth is as follows:

> "I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth."

8.12. If the witness statement is in English, and the witness does not understand English, the witness and interpreter must endorse the following attestations:

> "This statement has been read to me in [LANGUAGE], a language I understand, by [NAME OF INTERPRETER]."
>
> "I, [NAME OF INTERPRETER], read this statement to [NAME OF WITNESS] faithfully interpreting it into [LANGUAGE]."

9. Expert evidence

9.1. Expert reports should be as concise as possible and focused on the issues in dispute which are within the author's field of expertise. Lengthy and discursive commentary which is not directly relevant to the disputed issues is not conducive to the proportionate despatch of judicial business in

accordance with the Overriding Objective of the Procedure Rules and procedural rigour.

9.2. An expert report must not exceed 20 pages. The party adducing the expert evidence may apply in writing, with reasons in support of the application, for an expert report exceeding 20 pages, or for any addendum reports, to be served.

9.3. An expert's report must:

(a) be addressed to the Tribunal and not to the party from whom the expert has received instructions;

(b) give details of the expert's qualifications;

(c) give details of any literature or other material which the expert has relied on in making the report;

(d) attach the letter of instruction, which must include the disputed issues as then understood;

(e) contain a statement confirming the material and evidence provided to them (this can be achieved by clear reference to the letter of instruction);

(f) make clear which of the facts stated in the report are within the expert's own knowledge;

(g) say who carried out any examination, measurement or other procedure which the expert has used for the report, give the qualifications of that person, and say whether or not the procedure has been carried out under the expert's supervision;

(h) where there is a range of opinion on the matters dealt with in the report:

(i) summarise the range of opinion, so far as reasonably practicable; and

(ii) give reasons for the expert's own opinion;

(i) contain a summary of the conclusions reached;

(j) if the expert is not able to give an opinion without qualification, state the qualification;

(k) contain a statement that the expert understands their duty to the Tribunal and has complied, and will continue to comply, with that duty; and

(l) contain the date on which it was signed.

9.4. An expert's report must be verified by a statement of truth as well as containing the statements required in paragraph 9.3. The form of the statement of truth is as follows:

> "I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer."

10. Country Information Evidence

10.1. A reported decision of the Upper Tribunal, the AIT[13], or the IAT[14], bearing the letters "CG" shall be treated as an authoritative finding on the country guidance issue identified in the decision, based upon the evidence before the members of the Tribunal who decided the appeal. Thus, unless it has been expressly superseded or replaced by any later "CG" decision, 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.

10.2. A list of current CG cases is maintained on the Upper Tribunal's website. Any representative of a party to an appeal concerning a particular country will be expected to be familiar with the current CG decisions relating to that country.

10.3. Because of the principle that like cases should be treated in like manner, any failure to follow a clear, apparently applicable CG case or to show why it does not apply to the case in question is likely to be regarded as a ground for appeal on a point of law.

10.4. Only if there is no applicable and/or relevant country guidance, or a party argues that the Tribunal should depart from the country guidance, is it necessary for a party to provide background country material or information relating to the country background or conditions.

10.5. Any party who wishes to rely on country background information which is not available in the relevant country guidance decision, must make this clear and identify the disputed issue to which it relates (for example, the plausibility of a particular incident or where risk on return for reasons relating to a particular characteristic or history is disputed, even where an appellant is found to be credible).

10.6. Parties relying on material within country guidance decisions or additional country background information must include a country information

[13] The Asylum and Immigration Tribunal.
[14] The Immigration Appeal Tribunal.

evidence schedule ('the country schedule') within the bundle. The country schedule must:

(a) contain the country guidance paragraph references and/or extracts of additional country background information relied upon by reference to each disputed issue;

(b) not exceed 12 pages; and

(c) include the relevant hyper-link to the additional country background information source document.

10.7. It is the responsibility of the party challenging the accuracy or context of the extract to put the party producing the evidence on notice within the ASA or review that it will be necessary for the full source document to be made available at the hearing.

10.8. The party producing the country background information/reports in the country information evidence schedule may apply in writing, with reasons in support of the application, for permission to rely upon a country schedule exceeding 12 pages with an attached proposed country schedule.

PART 4
THE SUBSTANTIVE HEARING

11. <u>The substantive hearing and the issues based approach</u>

11.1. Parties should come to a substantive hearing ready to:

(a) provide the judge with a timetable for the hearing;

(b) identify the bundles and any other documents that need to be considered in the case, and explain how they have been provided to the Tribunal;

(c) identify the disputed issues that the Tribunal is being asked to decide in the case;

(d) have relevant witnesses adopt their witness statement and be cross-examined, and explain any steps required to accommodate this, in the light of any vulnerability or otherwise of the witness; and

(e) make submissions on the disputed issues in light of the oral and documentary evidence.

11.2. The advocates at a hearing should seek to agree these matters prior to the hearing, or identify any areas of dispute that require preliminary decisions.

11.3. The judge may clarify and discuss these matters, and decide any preliminary matters, to achieve a fair hearing in accordance with the Overriding

Objective. Account will be taken of the particular needs of appellants in person.

11.4. The outset of the substantive hearing is the final opportunity to refine and further narrow the disputed issues or agree issues or matters that are in dispute. Once settled, the disputed issues define the scope of the appeal hearing and confine the territory to be explored in the evidence, submissions and decision.

12. Adjournments

12.1. An application for the adjournment of an appeal must be supported by full reasons and any reasonably available supporting material or evidence and made no later than 4.30 p.m. one clear working day before the date of the hearing. It must be accompanied by proposed draft directions for the judge to consider.

12.2. For the avoidance of doubt, where a case is listed for hearing on, for example, a Monday, the application must be received by 4.30 p.m. on the previous Thursday.

12.3. Any application made later than the end of the period mentioned in paragraph 12.1 must be made at the hearing and will, save in exceptional circumstances, require the attendance of the party or the representative of the party seeking the adjournment.

12.4. Parties must not assume that an application will be successful even if made in accordance with paragraph 12.1.

12.5. If an adjournment is not granted and the party fails to attend the hearing, the Tribunal may proceed with the hearing in that party's absence.

12.6. If an adjournment is granted, the Tribunal shall issue an Order containing directions to ensure that the appeal can be finally determined within a reasonable time.

13. Child, vulnerable adult or sensitive witnesses

Manner in which evidence is given

13.1. The Tribunal must have regard to the latest version of the Equal Treatment Bench Book and the Joint Presidential Guidance Note No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance in considering how to facilitate the giving of evidence by a child, vulnerable adult or sensitive witness.

13.2. It may be appropriate for the Tribunal to direct that the evidence should be given by telephone, video link or other directed means, or to direct that a person be appointed as an intermediary, or where appropriate Litigation Friend. Where appropriate, the Tribunal may direct that questions asked of a witness must use plain English or contain only a single proposition in each question, and must ensure that the manner of questioning is otherwise

subject to judicial control to ensure an appropriate tone. Breaks may be given where they are considered conducive by the judge to the giving of best evidence.

14. Record of proceedings

14.1. The Tribunal will keep a record of the proceedings of every hearing.

14.2. The record of proceedings will normally be an audio recording[15] rather than a written record. Accordingly, any written record of the proceedings taken by the Tribunal may only be disclosed to the parties if an audio recording was not made or has become unavailable. The audio recording and/or transcript of proceedings may be obtained using the process published by HMCTS.

14.3. Where oral reasons are given for a decision at the conclusion of a substantive hearing, the expectation is that the parties will make a note of those reasons.

PART 5
DECISIONS AND REASONS

15. Decisions and reasons: principles that apply to substantive and procedural decision making

15.1. This section is to be read in conjunction with the Practice Direction on Reasons for Decisions which applies in general to the First-tier Tribunal.

15.2. In the giving of reasons, as always in the conduct of Tribunals business, judicial time should only be spent on tasks that are essential to achieving the efficient and effective administration of justice. Written reasons should only be provided where they are expressly required by the Procedure Rules or where the interests of justice otherwise compel written reasons being given, and, in every case where they are required, only to the extent and in the terms necessary to dispose justly of the matter in hand. Any practice of routinely providing written reasons that do not need to be provided fails to make full and effective use of judicial time, which is a precious resource in the justice system.

15.3. In some non-deportation Article 8 human rights and EUSS cases, the Tribunal may be able to give its decision shortly after the conclusion of a hearing by providing a short Notice of Decision or by stating its reasons orally. Reasons will only be provided orally where the judge is satisfied that audio recording facilities are available and an audio recording will be made of the oral reasons, so that the audio recording and any available

[15] "Audio recording" includes a digital or analogue recording, as well as a video recording which includes an audio recording.

transcription can serve as the starting point in drafting any written reasons, if requested.

15.4. Where written reasons are given, they must be concise and focused upon the disputed issues on which the outcome of the case has turned.

15.5. The reasons provided for any decision should be proportionate to the significance and complexity of the disputed issues that have to be decided. Reasons need refer only to the issues and evidence in dispute, and explain how those issues essential to the Tribunal's conclusion have been resolved[16]. It follows that the Tribunal need not identify all of the evidence relied upon in reaching its findings of fact, or elaborate at length its conclusions on any issue of law.

15.6. Stating reasons at greater length than is necessary is not in the interests of justice. To do so is an inefficient use of judicial time, does not assist either the parties or an appellate Court or Tribunal[17], and is therefore inconsistent with the Overriding Objective. In some cases, succinct paragraphs containing the necessary self-directions and addressing the disputed issues will suffice. For a procedural decision the reasons required will usually be shorter still.

15.7. When determining permission to appeal applications the Tribunal must take account that it is important to exercise appropriate restraint when considering a challenge based on the adequacy of reasons[18]. Case law emphasises the importance of a realistic and reasonably benevolent approach – decisions under appeal must be read fairly and not hypercritically[19]. Expert Tribunals should be taken to be aware of the relevant authorities and to be seeking to apply them without needing to refer to them specifically, unless it is clear that they have failed to do so[20]. It should not be assumed that a Tribunal has misdirected itself merely because every step in its reasoning is not fully set out in its decision[21].

PART 6
MISCELLANEOUS

16. Reported and unreported decisions

16.1. Reported decisions of the Upper Tribunal, the AIT, and the IAT, which are "starred" shall be treated by the Tribunal as authoritative in respect of the matter to which the "starring" relates, unless inconsistent with other authority that is binding on the Tribunal. All reported decisions of the Upper Tribunal, the AIT, and the IAT should be treated as authoritative statements

[16] *TC* Annex para 8.
[17] *Jones v Jones* [2011] EWCA Civ 41 at [3].
[18] *TC* Annex para 13.
[19] *DPP v Greenberg* [2021] EWCA Civ 672 at [57].
[20] *TC* Annex para 12.
[21] *TC* Annex para 13.

of principle unless set aside or inconsistent with other authority that is binding on the Tribunal.

16.2. A decision or judgment of any court or tribunal which has not been reported may not be cited in proceedings unless:

(a) the person who is or was the appellant before the Tribunal, or a member of that person's family, was a party to the proceedings in which the previous decision was issued; or

(b) the Tribunal gives permission.

17. Practice Statements by President

17.1. The President may issue Practice Statements which may include the standard procedure and directions for the preparation of appeals. In so far as there is any inconsistency between this Practice Direction and Practice Statements, this Practice Direction must be followed.

Unless the contrary expressly appears, this Practice Direction replaces all previous Practice Directions relating to the Tribunal. Where any previous Practice Directions which this Practice Direction replaces made provision in part or in whole to the Upper Tribunal, this Practice Direction relates only to the First-tier Tribunal. Any such previous Practice Directions therefore are to be read as if they do not apply to the First-tier Tribunal.

This Practice Direction is made by the Senior President of Tribunals with the agreement of the Lord Chancellor under section 23 of the Tribunals, Courts and Enforcement Act 2007.

1 November 2024
Sir Keith Lindblom
Senior President of Tribunals