



TRIBUNALS
JUDICIARY

THE HON MR JUSTICE BLAKE
PRESIDENT OF THE UPPER TRIBUNAL, IMMIGRATION AND ASYLUM CHAMBER

Presidential Guidance Note 2013 No 3:

**GUIDE FOR UNREPRESENTED
CLAIMANTS
IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

SEPTEMBER 2013

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Foreword

All courts and tribunals throughout the country recognise the rights of the parties to represent themselves in a case that involves them. We are aware that a person may be unfamiliar with the procedures and this Guide is designed to help them.

The Guide¹ deals solely with the procedures of the Immigration and Asylum Chamber of the Upper Tribunal for appeals from the First-tier Tribunal. The Upper Tribunal is based at Field House in London, although hearings may be at other centres.

Present experience shows that unrepresented claimants are appearing more often before this tribunal and so the purpose of the Guide is to set out a few important practical points for a claimant to bear in mind when presenting his or her case. It does not set out to cover every aspect of the procedure, nor is it intended to give advice on the substantive law.

Signed

The Honourable Mr Justice Blake

President of the Upper Tribunal Asylum and Immigration Chamber

September 2013

¹ This guide has been prepared by Nathan Goldstein and Bernard Dawson who are judges of the Upper Tribunal.

1. Introduction: key points to bear in mind.

- 1.1 The Upper Tribunal (Immigration and Asylum Chamber) (UTIAC) is a superior court of record dealing with appeals against decisions (which are called determinations) made by the First-tier Tribunal (Immigration and Asylum Chamber) (F-tT). One of its principal purposes is to hear and decide appeals against decisions made by the First-tier Tribunal in matters of immigration, deportation, asylum, nationality and human rights. The Upper Tribunal also deals with some categories of applications for judicial review. This type of hearing is beyond the scope of this guide.
- 1.2 Either the claimant or the Secretary State for the Home Department (SSH/D), (the Immigration Officer (IO) or the Entry Clearance Officer (ECO) can apply for permission to appeal the decision of the First-tier Tribunal to the Upper Tribunal, seeking to show in the grounds with the application, that the decision of the First-tier Tribunal Judge discloses an error on a point of law.
- 1.3 An application for permission to appeal must first be made to the F-tT. If it is refused then a further application can be made to the Upper Tribunal. Where permission to appeal to the Upper Tribunal is granted, there will be either a hearing before one or more Upper Tribunal Judges or the case may be decided without an oral hearing on the papers available. In both situations, the first task is to decide whether the F-tT made an error of law on the basis on which permission has been granted.
- 1.4 The focus of the Upper Tribunal is therefore initially on the lawfulness of a decision of the F-tT. The Upper Tribunal cannot set aside a decision of the F-tT unless satisfied that the F-tT judge has made an error of law that requires the determination to be set aside. Examples of errors of law include situations where a judge has made a mistake about the meaning of the Immigration Rules; not followed a binding decision of a higher court; overlooked important evidence; made a decision that was not reasonably open to him or her on the

evidence or where there has been unfairness in the way matters have proceeded.

- 1.5 If the Upper Tribunal decides that an error of law has been made by the F-tT and that the nature of the error means that the F-tT decision must be set aside it must either re-make the decision itself, at the same hearing or on a later date send the case back to the F-tT to be re-decided there (this is called “remitting the case”) or order the F-tT to rehear the case. The decision whether to send back the case to the F-tT is governed by the extent to which there needs to be further findings of facts made or where the effect of the error means that there was no fair hearing previously.¹
- 1.6 The claimant or the SSHD, IO or the ECO may challenge the decision of the Upper Tribunal by applying for permission to appeal to the Court of Appeal². In order to obtain permission, the grounds of appeal must show an arguable error of law by the Upper Tribunal or that there is some important point of principle or practice or some other compelling reason for permission to be granted. If the application is refused by the Upper Tribunal it can be renewed to the Court of Appeal itself.
- 1.7 Proceedings in the Upper Tribunal are regulated by procedure rules, which can be viewed at <http://www.justice.gov.uk/tribunals/rules>. These rules regulate the way in which the Upper Tribunal handles its work.

¹ The considerations taken into account in deciding where the case should be reheard are set out in Practice Statements of the Upper Tribunal; the current version is at Appendix Five.

² If the case was heard in Scotland the appeal will be to the Court of Session. If the appeal is heard in Northern Ireland the appeal must be to the Court of Appeal in Northern Ireland.

2. Applying to the First-tier Tribunal for Permission to Appeal to the Upper Tribunal

2.1 You must use Form **IAFT- 4 (see annex one)** for permission to appeal to the Upper Tribunal. Once completed, you must send the form by post or fax to:

First-tier Tribunal (Immigration and Asylum Chamber)

PO Box 7866

Loughborough

LE 11 2XZ

Fax: 015092 221550.

2.2 This form must be completed and lodged with the F-tT within the time limits set out in the letter accompanying the determination.

2.3 The application will be considered by a Judge of the F-tT who will decide whether to grant permission to appeal to the Upper Tribunal.

2.4 It is important to include with your application the determination of the tribunal, together with the reasons why you think the tribunal made an error of law. Examples of where error of law can arise are given in the Introduction to this guide. The list is not however exhaustive.

2.5 Set out your written reasons as clearly as you can. This will help the judge understand why you think the F-tT made an error of law. Typed grounds are preferable but the grounds can be in handwriting, provided they are presented clearly and legibly

2.6 If you are detained or it is a fast-track case, then your application must be sent to the Detention Centre where you are located.

2.7 If you send in your application by fax and you have confirmation of receipt you do not also need to send it by post.

2.8 Your completed application for permission to appeal should be sent with the relevant documents as detailed in the application form.

- 2.9 It is important that you provide with your application all the documents you are relying upon as this will ensure that those documents are seen by the Tribunal Judge who decides your application. The documents you provided with your initial appeal should normally have been retained on the Tribunal's file.
- 2.10 The application for permission to appeal will generally be dealt with on the papers and without an oral hearing.

3. Applying to the Upper Tribunal for Permission to Appeal

- 3.1 If you are refused permission to appeal by the F-tT, a further application for permission to appeal can be made to the Upper Tribunal. As with your application to the F-tT, your application will be considered by a judge of the Upper Tribunal without a hearing unless the judge decides, exceptionally, that there should be an oral hearing of the application. Such cases are very rare.
- 3.2 The application must be completed and lodged with the Upper Tribunal within the time limits set out in the letter accompanying the decision refusing permission to appeal by the F-tT.

What happens if my application is out of time?

- 3.3 If you send the application to the Upper Tribunal so that it will arrive later than the time required, then your application *must* include a request for an extension of time together with the reason why you were unable to send it in time. It is important to understand that unless the Upper Tribunal considers that it is appropriate to extend time, your application will be rejected. This is described in the decision as “not admitted”.
- 3.4 It is important to keep the reasons or grounds why you consider permission should be granted (" the renewed grounds ") as clear as you can. The Upper Tribunal Judge will not be assisted by a large number of pages with a great deal of irrelevant material. Do remember that you are required to include with your application a copy of the decision (“the determination”) by the F-tT Judge. Whilst typed grounds are preferable, they can be handwritten provided that they are clear and readable.
- 3.5 You must use Form **IAUT-1 (see annex two)** for this purpose. Once completed, you must send the form by post or fax to:

Upper Tribunal (Immigration and Asylum Chamber)

1A Field House

15 Breams Buildings

London EC4A 1DZ

Fax (020) 7073 0351

- 3.6 If you are detained or it is a fast-track case, your application must be sent to the Detention Centre where you are located. If you send your application by fax you do not also need to send it by post.
- 3.7 Your completed application for permission to appeal should be sent with the documents which are listed in the application form. The documents that you provided with your initial appeal should normally have been retained on the Tribunal's file. There is no need to send them again.

4. What happens after permission to appeal has been granted¹

- 4.1 The documents you need to prepare or consider will depend upon whether you have been granted permission to appeal or whether it is the SSHD, the IO or the ECO who has been granted permission.
- 4.2 If you have been granted permission to appeal, you will continue to be called the appellant. If the SSHD, IO or the ECO is successful in obtaining permission to appeal, he or she becomes known for the purposes of the appeal before the Upper Tribunal, as the "appellant". The roles are therefore reversed and, unless the Upper Tribunal directs otherwise, you will become known as the "respondent".
- 4.3 When the SSHD, IO or ECO has been granted permission to appeal you are entitled to file a response indicating whether you oppose the appeal to the Upper Tribunal, and the grounds on which you do so. You can also say whether you want the Upper Tribunal appeal to be determined with or without an oral hearing, although that decision will be taken by the Upper Tribunal Judge, after any views expressed by the parties have been taken into account. This is called a rule 24 response (as provided for by Rule 24 of the Procedure Rules – see para 1.7 of the Introduction to this guide). Any response that you wish to make must be in writing and must be posted or faxed to the Upper Tribunal, so that it is received no more than 14 days ² after the date on which the Upper Tribunal sent the copy of the notice of appeal to you. In a fast-track case this must be no later than one day before the hearing of the appeal. The response must state your name and the address at which you are living.

¹ If you have been refused permission to appeal you do not have a right of appeal to the Court of Appeal. Such decisions are excluded decisions which can only be challenged by way of Judicial Review.

² Although the rules state a time period of one month, it is the usual practice of the F-tT to require responses in a shorter period of time.

- 4.4 If you file a response with the Upper Tribunal later than the time required, then your response must include a request for an extension of time and the reason why your response was not provided in time.
- 4.5 The SSHD, IO or ECO is entitled to file a reply to your response within 14 days of receiving the rule 24 response.
- 4.6 Where you have been granted permission to appeal, the SSHD, IO and ECO may file a rule 24 response
- 4.7 Where you have been successful in obtaining permission to appeal, you will also receive from the Upper Tribunal Directions setting out the steps that are required to be taken before the hearing. Please read these Directions carefully and make sure that you comply with the time limits given. An example is at Appendix Six.
- 4.8 The Directions usually include a requirement that you file with the Upper Tribunal and serve on the SSHD, IO or ECO your skeleton argument or written submissions (which means a summary of your case). A skeleton argument should set out the main arguments you wish to rely upon at the hearing. A skeleton argument should develop your argument why it is considered that F-tT made an error of law requiring its decision to be set aside. You do not need to prepare a skeleton argument or written submissions if you wish to simply rely on the grounds upon which you applied for permission to appeal.
- 4.9 If you want the Upper Tribunal to consider new evidence that was not before the F-tT then, a notice indicating the nature of that evidence must be filed with the Upper Tribunal and served on the SSHD together with the notice required by rule 15 (2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 summarising the evidence and explaining why it had not been submitted earlier.

4.10 If the SSHD, IO or ECO wishes the Upper Tribunal to consider evidence that was not before the F-tT then he /she too, must comply with the requirements of rule 15 (2A) for this purpose.

5. The appeal hearing

- 5.1 Most appeals are heard at Field House. The Upper Tribunal sits at other locations in the United Kingdom as well. The notice of hearing that you receive will indicate the time, date and place.
- 5.2 You must arrive in good time for your hearing. Morning hearings start at 10 am and those in the afternoon at 2 pm. There may be more than one case in each session but you should be ready to begin if your case is called on first. Make sure that you arrive at least an hour beforehand as there can be queues at certain times of the day to get through the security screening at the entrance to the tribunal building.
- 5.3 You need to bring with you all the documents that you consider are important to your case. These should include copies or the originals of the documents that you have already filed with the Tribunal and served on the SSHD in response to the Directions.
- 5.4 On arrival at the hearing centre make your way to the reception area where you will find on a notice board a list of the day's hearings. Report to the receptionist who will tell you where your appeal will be heard and the name of the judge or panel who will hear it. Unless you are asked to wait in the reception area, you should go to the allocated court room and wait outside the door.
- 5.5 You will find that shortly before the commencement of the hearing, you will be approached by a court official who is called a clerk, who will arrange for you to take your place in the hearing room in readiness for the hearing of the appeal. If no one has approached you, then go back to reception for assistance.
- 5.6 Nearly all hearings are open to the public. If your appeal is not the first in the list, you can normally still go into the courtroom and listen to other cases. You may find this helpful, as you will see how the judge runs the court. Alternatively you can remain outside until your case is called.

- 5.7 It may be that the order of the list will change so that the cases are not heard in the same order as they appear in the list. It is important to keep in touch with the clerk if you are waiting outside the hearing room.
- 5.8 Mobile telephones must be switched off whilst in the court room. You are not permitted to record the proceedings or take any photographs.
- 5.9 The SSHD is normally represented by a Presenting Officer who may introduce him/herself to you before the hearing. This is perfectly normal. They may wish to explain some aspect of what they propose to do or say at the hearing. This is not a matter that should cause you any concern: listen carefully and try to understand what is being said. If you do not fully understand, ask the Presenting Officer to repeat it.
- 5.10 When you go into court for your hearing, sit where asked by the clerk. This will usually be at a table at the front of the room and facing the judge. The Presenting Officer will sit on one side.
- 5.11 Everyone in the court room is expected to stand when the judge or panel enter. You will then be invited to sit. Thereafter there is no need to stand until the end of the hearing when the judge leaves the room. You can address the judge whilst seated. The judge should be addressed as Sir or Madam as appropriate. Where there is more than one judge it is only necessary to speak to the judge who starts the proceedings unless you are asked a question by one of the other judges.
- 5.12 If you have been granted permission to appeal, usually you will be expected to present your case first. If you have requested the Tribunal to provide an interpreter arrangements will have been made for one to be present for the hearing.
- 5.13 Remember that unless it has already been decided without a hearing that the F-tT made an error of law, the judge or panel in the Upper Tribunal will have to consider this first.

- 5.14 Before the hearing of your case, you may wish to write down a summary of your key points to bring to the court that you can use as a reminder of what you want to say. If you wish, you can hand in a copy of that summary for the judge to read, provided you give a copy to the Presenting Officers as well.
- 5.15 Where possible, and when there are a number of reasons that you wish to put forward to demonstrate that the F-tT judge made an error of law, you should explain each reason. For example you could start by saying "my first reason is ... my second reason is ..." etc. This will help the judge to follow what you are saying.
- 5.16 The judge will be aware that you do not have the benefit of legal representation and will have that in mind in conducting the hearing in order to ensure that you are able to present your case as well as you can.
- 5.17 It is important not to interrupt the judge or the other party when they are speaking. However, if it appears to you that the judge is moving onto the next part of the hearing before you have had the chance to say something that you feel is important, then it is acceptable for you to interrupt by holding up your hand.
- 5.18 You should be aware that at all times the overriding aim of the tribunal will be to ensure that the proceedings are handled fairly and that there is a just and efficient disposal of your appeal.
- 5.19 If the SSHD, IO or ECO had been granted permission to appeal, then the Presenting Officer will explain to the judge what the challenge to the F-tT's decision is about.
- 5.20 Since the judge will have read the relevant papers in the case beforehand, provided that they had been lodged on time, it may be that the judge will have questions to ask at the beginning of the hearing.

- 5.21 The proceedings will often be in the form of a dialogue or conversation between the judge and the parties rather than the judge playing no active part until all parties have had their say.
- 5.22 You should listen carefully to what is said. You may wish to note down any matter that you consider of importance.
- 5.23 Once you have heard the Presenting Officer's submissions in response to your own, if you are the appellant, you will have the opportunity to have the final word.
- 5.24 At the close of the hearing, the judge will either give his/her decision there and then, or reserve the decision which means that you will be notified of the Upper Tribunal's decision in writing at a later date.
- 5.25 If the judge decides at the hearing that there is an error of law and that the decision of the F-tT should be set aside, the judge may proceed to hear the appeal in order to make a fresh decision immediately or indicate that it will be heard at a later date. The judge will decide whether any findings of fact made by the F-tT are to be preserved, even though the decision on your appeal to the F-tT has been set aside, and if it is necessary to hear new evidence or consider new documents. The judge may decide the case only on the evidence that was before the F-tT. It may be that the judge will decide that your appeal should be sent back to the First-tier Tribunal to be heard and considered again. You should be prepared for any of these outcomes unless directions indicate otherwise.

6. Sponsor as Representative

- 6.1 In an appeal against a decision refusing entry clearance to come to the UK, there will usually be no objection to the person who supported the application which led to refusal being your representative at the appeal hearing. Such a person is called a sponsor. The sponsor will not be notified of the hearing unless he or she has been recorded by the Tribunal as your representative and their address in the UK is given.¹
- 6.2 Whilst it would be better if you or your sponsor notified the tribunal in writing before the hearing that he/she will be attending, this can also be done by informing the judge at the beginning of the hearing.
- 6.3 The Tribunal Procedure Rules do not prevent individuals from acting both as representative and as a witness in the same appeal, so long as that person is not in the business of providing immigration services. The Tribunal will have no general objection to your sponsor giving evidence in support of your appeal before making his/her closing submissions on your behalf.

¹ see rule 11 of the Procedure Rules

7. “McKenzie friend”

- 7.1 This is an expression used to describe someone who is not legally qualified but who comes along to the hearing to assist you. In most cases this will be an English-speaking friend or relative who, perhaps, has more familiarity with living in the United Kingdom. The fact that such a person would like you to succeed in your appeal, should not usually prevent him or her from being allowed to assist you at the hearing.
- 7.2 The clerk will ask you whether you have a representative before the hearing begins and you should mention that you have someone to assist you. You should also ask the judge at the start of the hearing for permission to have the assistance from such a person.
- 7.3 In deciding whether or not to give consent to your “McKenzie Friend” the judge may ask what relevant experience (if any) the person concerned has, whether he or she has any interest in the case and that he or she understands the role and the duty of confidentiality that arises if consent is given. The judge may refer to Practice Statements dated 25 September 2012. (See Appendix Five)
- 7.4 The judge will decide how your McKenzie Friend is best able to assist you at the hearing. This may be limited to the McKenzie Friend explaining your case at the beginning and or at the end of the hearing or taking notes rather than speaking on your behalf. The judge makes his decision based on what is just and fair.

8. Application to the Court of Appeal for Permission to Appeal

- 8.1 Any party to an appeal heard by the Upper Tribunal has a right of appeal to the Court of Appeal in England and Wales (or the Court of Session in Scotland or the Court of Appeal in Northern Ireland depending on where the F-tT heard the appeal) on any point of law arising from the determination made by the Upper Tribunal, except for "excluded decisions" (For "excluded decisions" see Words and Terms attached). In order to bring an appeal you need to be granted permission. This can be from the Upper Tribunal or from the Court of Appeal, if the Upper Tribunal refuses permission.
- 8.2 However, the Upper Tribunal will not grant permission to appeal unless it is satisfied that your application raises some important point of principle or practice or shows that there is some other compelling reason to hear the appeal.
- 8.3 If your application for permission to appeal has been refused by the Upper Tribunal, it is open to you to re-apply to the Court of Appeal, or Court of Session or the Court of Appeal in Northern Ireland (as appropriate) where the same test will apply.
- 8.4 An application to the Upper Tribunal for permission to appeal to the Court of Appeal or Court of Session must be made in writing. It must; (i) identify the decision of the Upper Tribunal by quoting the appeal number e.g. AA/1000/2013; (ii) the asserted error or errors of law and, (iii) the result that you seek.
- 8.5 Your application must be received by the Upper Tribunal within time set out in the letter accompanying the Upper Tribunal's determination.
- 8.6 There is no form for making an application to the Upper Tribunal. It is sufficient to set it out in a letter.

8.7 Your written application must be sent within the relevant time periods by post or fax to:

Upper Tribunal (Immigration and Asylum Chamber)

Field House

15 Breems Buildings

London EC4A 1DZ

Fax: 0207 073 0351

8.8 If you are refused permission to appeal by the Upper Tribunal and you decide to re-apply to the Court of Appeal, you must use Form **N161 (annex three)**. Once completed, you must send the Form by post to:

The Civil Appeals Office

Room E307

3rd Floor

East Block

Royal Courts of Justice

Strand

London

WC2A 2LL

8.9 The form should be completed and lodged with the Civil Appeals Office within 14 days of service of the decision of the UT refusing permission to appeal.

8.10 If you require further assistance, the Court of Appeal Office Registry has an "Appeal Pack" which offers practical guidance to those who wish to lodge an appeal. The Registry is currently located at the above address.

8.11 If your application is to the Court of Session you must use Form **40.2 (annex three)**. They ask that you contact them in advance. The direct number for the Inner House and Extracts department is: (0131) 240 6748. The application must be completed and lodged within the same timescale (see above) and sent to:

Court of Session

Parliament House

Parliament Square

Edinburgh

EH1 1 RQ

Words and Phrases used in the Upper Tribunal

UT – refers to the Upper Tribunal.

F-tT – refers to the First-tier Tribunal.

SSHD – refers to the Secretary of State for the Home Department, sometimes also referred to as the Home Office.

ECO – Entry Clearance Officer.

IO – Immigration Officer

Appellant – refers to the person who is appealing with permission the decision of the First-tier Tribunal.

Claimant – is used in this guide to refer to the person who appealed the immigration decision to the F-tT.

Respondent – is the other party to the appeal.

A minor – describes a person under the age of 18.

Judge of the Upper Tribunal – this is the title of a judge who is appointed to the Upper Tribunal and who does not also sit in the F-tT. Judge of the Upper Tribunal can also include a High Court Judge or a Judge of the Court of Sessions or the High Court in Northern Ireland.

Deputy Judge of the Upper Tribunal – is a person who has been appointed to sit as a judge when required in the Upper Tribunal but who generally sits also in the F-tT

Panel hearing– this describes hearings where there is more than one judge or a judge or non legal member.

Non legal members – occasionally sit with judges of the Upper Tribunal and participate in the decision making process.

Immigration decision – refers to the decision made by the SSHD or the ECO or IO against which an appeal has been made to the F-tT.

Notice of Appeal – this is the document used to appeal against the decision of the SSHD or ECO. Where permission to appeal to the Upper Tribunal is granted the grounds for seeking permission to appeal will stand as the Notice of Appeal in the Upper Tribunal

Address for service - Each party to the proceedings must give an address for the service of documents. The address for the claimant must be the address at which he or she is living. It is important that any change is promptly notified to the Upper Tribunal. If a claimant does not do so, and so does not receive the notice of the hearing, the hearing will go ahead in his or her absence.

Application for Permission to Appeal - this describes the document used to appeal against the determination of the F-tT.

The expression is also used when someone wishes to apply for permission to appeal the decision or determination of the Upper Tribunal. See chapters 2 and 3 for more detail.

Directions - refers to an order by the Upper Tribunal, requiring the parties to do something, such as lodging a particular document by a date referred to (see chapter 4)

Practice Directions and Statements - these refer to general procedures that apply in all cases to enable a party to know how his or her case will be dealt with. They can be found at www.judiciary.gov.uk; and then follow the links.

Procedure Rules - describes The Tribunal Procedure (Upper Tribunal) Rules 2008 (<http://www.justice.gov.uk/tribunals/rules>) that regulate proceedings in the Upper Tribunal.

Error of law - is the focus of the Upper Tribunal when reviewing a decision of the F-tT. Before the Upper Tribunal can set aside a decision of the F-tT it needs to decide if the F-tT made an error of law. If so, it may, but need not, set aside the decision of the F-tT. If it does set it aside it must either send the case back to the F-tT or remake the decision itself. Examples include situations where a judge has made a mistake about the meaning the Immigration Rules, not followed a binding decision of a higher court, overlooked important evidence, made a decision that was not reasonably open to him on the evidence or where there has been unfairness in the way that matters have proceeded.

A renewed application to the Upper Tribunal - this describes the process when application for permission to appeal has been refused by the F-tT. See chapter 3.

Judicial Review - is another form of proceedings which is beyond the scope of this guide.

The Administrative Court - see Judicial Review above.

The Court of Appeal - the court which will review the decision of the Upper Tribunal where permission to appeal is granted

The Supreme Court - is the highest court in the United Kingdom. It hears appeals from the Court of Appeal (or the Court of Sessions in Scotland and from the Court of Appeal in Northern Ireland).

The European Court of Human Rights - is based in Strasbourg France and hears appeals involving decisions of member countries of the Council of Europe (which includes the UK) regarding the Human Rights Convention.

Court of Justice of the European Union - considers cases involving issues on the interpretation of Directives of the European Union. There are two principal directives that concern the Upper Tribunal. The first is often referred to as the Qualification Directive which sets out the European Law on asylum claims. This directive is reproduced in the Immigration Rules. The second is the Citizens Directive which sets out the law regarding the rights of free movement within the EU for EU citizens

The Refugee Convention - is the 1951 Geneva Convention the cornerstone of all refugee law and will be referred to by judges in asylum appeals.

The Human Rights Convention 1950 - sets out core human rights such as those addressed in Article 3 (prohibition against torture, inhuman or degrading treatment or punishment) and Article 8 (respect for private and family life)

The Immigration Rules HC 395 - set out the policies in the form of rules of the SSHD in maintaining immigration and visa control.

Policies/Immigration Directorate Instructions - these are in addition to the Rules and explain how the SSHD instructs staff to approach particular situations and issues.

Country Guidance decisions -The purpose of a country guidance decision is to give general guidance on conditions and therefore the risks of return to a country although every individual case is always decided on the particular facts that are presented.

Reported decisions?

APPENDIX ONE

FORM IA FT4



**FIRST-TIER TRIBUNAL
Immigration and Asylum Chamber**

Office stamp
(date received)

**FIRST-TIER TRIBUNAL APPLICATION
FOR
PERMISSION TO APPEAL TO UPPER TRIBUNAL**

This form should be used when making an application to the First-tier Tribunal for permission to appeal to the Upper Tribunal. You **must** apply to the First-tier Tribunal for permission to appeal before you make an application/appeal to the Upper Tribunal.

Please

Read the guidance notes before completing the application for permission to appeal. Use black ink and complete the form in **CAPITALS** or in typewriting. Use another sheet of paper if there is not enough space for you to say everything. (Please put your name at the top of any additional sheets)

A

Applicant's details

Appeal number

Home Office Ref No

Full Name

Address

Date of Birth

Do you have a representative?

Yes No

If yes, please give your representative's details below

Name of organisation or business (if applicable)

Contact name

Address

Telephone number

Reference number
(if any)

B

Time limit for making a First-tier application for permission to appeal.

Date of First-tier
Tribunal Determination

The application **must be received** within whichever of the following periods is relevant in your case:

If the case is a **fast-track case** at the time the application is made, **2 working days** after the date on which you were served with the First-tier Tribunal's decision.

If you were the appellant before the First-tier Tribunal and are **outside the United Kingdom** at the time the application is made, **28 days** after the date on which you are deemed to have been served with the First-tier Tribunal's decision.

In all other cases, **5 working days** after the date on which you were deemed to have been served with the First-tier Tribunal's decision.

If it is likely to reach us after this time you must ask the Tribunal to extend the time limit for making the application giving full reasons why it is late.

Reasons why the application is made late (if applicable).

C

Reasons for appealing

Please state what **error(s) of law** you consider the Tribunal has made **and the result you are seeking**.

Continue on another sheet if necessary

You should enclose with this form any documents you are relying on in this Part and which the First-tier Tribunal does not already have.

D

Application for Permission to Appeal to the Upper Tribunal

I apply for permission to appeal to the Upper Tribunal

I authorise my representative named in **Part A** above to act on my behalf in all proceedings before the First-tier Tribunal.*

(* Delete if you have no representative or you are a solicitor filling in this form on behalf of a client)

Applicant's/Solicitor's signature

Date

/ /

After you have filled in the form, please send it to:

First-tier Tribunal (Immigration and Asylum Chamber)
PO Box 7866
Loughborough
United Kingdom
LE11 2XZ

Or by Fax 01509 221550

If the case is a fast track, completed applications should be sent or faxed to:

First-tier Tribunal (Immigration and Asylum Chamber)
IA Harmondsworth
Colnbrook By Pass
Harmondsworth
Middlesex
UB7 0HD

Or by Fax 0870 761 7721

First-tier Tribunal (Immigration and Asylum Chamber)
IA Yarlswood
Top of Twinwood Road
Clapham
Bedfordshire
KM41 6HL

Or by Fax 0123 422 4411

Once your application is received, it will be considered by the Tribunal Judge and you will be informed of the outcome and the next steps to take.

If you have any enquiries, please contact the Tribunals Customer Service Centre on **+44 (0)300 123 1711**

or by email Customer.Service@hmcts.gsi.gov.uk. Please quote your appeal number when you call.

APPENDIX TWO

FORM IAUT-1



UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Office stamp
(date received)

APPLICATION FOR PERMISSION TO APPEAL
from First-tier Tribunal (Immigration and Asylum
Chamber)

You **must** apply to the First-tier Tribunal for permission to appeal before you fill in this form.
Use this form *either* (1) **to apply to the Upper Tribunal for permission** to appeal if the First-tier Tribunal refused your permission to appeal or your application was not admitted
or (2) the First-tier Tribunal gave you permission to appeal **only on limited grounds** and you also wish **to apply to the Upper Tribunal for permission** to appeal on any of the grounds on which the First-tier Tribunal has refused permission.

Please Use black ink and complete the form in **CAPITALS** or in typewriting.
Use additional sheets of paper if there is not enough space for you to include everything.
(Please put your name at the top of any additional sheets.)

A About the Applicant

Full Name

Address

Postcode

Telephone Number

Date of Birth

B About the Representative

Do you have a solicitor or other representative? No (Go to Part C) Yes

If 'yes' please give your representative's details below

Name of representative

Organisation (if any)

Address of Representative	<input type="text"/>
Telephone number	<input type="text"/>
Fax Number	<input type="text"/>
Reference number (if any)	<input type="text"/>

C First-tier Tribunal Appeal details

Appeal number	<input type="text"/>
Home Office Ref No	<input type="text"/>
What was the date on which the First-tier Tribunal's decision was served on you? <i>This will be the date on the notice that came with it</i>	<input type="text"/>
Was the appeal dealt with under the fast track procedure in the First-tier Tribunal?	No <input type="checkbox"/> Yes <input type="checkbox"/>
Where did the First-tier Tribunal make the decision?	<input type="text"/>
What was the date of the application to the First-tier Tribunal for permission to appeal to the Upper Tribunal?	<input type="text"/>
Has the First-tier Tribunal granted permission to appeal?	No <input type="checkbox"/> Yes <input type="checkbox"/>
If yes, is permission granted on limited grounds?	No <input type="checkbox"/> Yes <input type="checkbox"/>

D Reasons for any delay

Did the First-tier Tribunal refuse to admit your application because it was late?	No <input type="checkbox"/> Yes <input type="checkbox"/>
Are you seeking to make this application outside the time limit that applies to you (see below)?	No <input type="checkbox"/> Yes <input type="checkbox"/>

1. *If the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time this application is made, the period is:*
 1. **7 working days** after the date on which notice of the First-tier Tribunal’s refusal of permission was sent to you
 - or*
 1. **5 working days**, if that notice was sent electronically or delivered personally.
1. *If the case is a **fast track case** at the time this application is made, the period is:*
 1. **4 working days** after the date on which notice of the First-tier Tribunal’s refusal of permission was sent to you
 - or*
 2. **2 working days**, if that notice was sent electronically or delivered personally.
2. *If the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time this application is made, the period is:*
 - 2.1 **56 days** after the date on which notice of the First-tier Tribunal’s refusal of permission was sent to you
 - or*
 1. **28 days**, if that notice of decision was sent electronically or delivered personally

If the answer to either of the questions in Part D is “yes”, please apply for an extension of time by giving your reasons for the delay here.

E Statement of Truth (to be signed when Part D is completed)

(I believe*)(The Applicant believes*) that the facts contained under Part D in this application notice

are true.

I am duly authorised by the Applicant to sign this statement*

(* Delete if you have no representative or you are a solicitor filling in this form on behalf of a client)

Full name

Name of Applicants Representatives firm and
position or office held

Signed

Date

F

Reasons for appealing

You can only appeal if you think the First-tier Tribunal was wrong on one or more **points of law**.

Please state what error(s) of law you consider the First-tier Tribunal made.

If the First-tier Tribunal gave you permission to appeal only on limited grounds and you also wish to apply for permission to appeal on any of the grounds on which permission has been refused, please explain why you consider permission should be granted in respect of those grounds.

If you require more space, please use another sheet of paper

G Request for an oral hearing of an Application

If you are given permission to appeal by the Upper Tribunal, do you want that appeal to be dealt with at an oral hearing?

No

Yes

Do you want this application for permission (as opposed to the appeal itself) to be considered at an oral hearing?

No

Yes
(Please say why)

H

Application for permission to Appeal

I apply for permission to appeal against the decision of the First-tier Tribunal.

I authorise my representative named in **Part B** above to act on my behalf in all proceedings before the Upper Tribunal.*

(* Delete if you have no representative or you are a solicitor filling in this form on behalf of a client)

Applicant's signature or signature of solicitor

--	--	--	--

Date

--	--	--	--

After you have filled in the form please send it to:

Upper Tribunal (Immigration and Asylum Chamber)
IA Field House
15 Breams Buildings
London
EC4A 1DZ

Or by Fax 0207 073 0351

If the case is a fast track, completed application forms should be sent or faxed to:

Upper Tribunal (Immigration and Asylum Chamber)
IA Harmondsworth
Colnbrook By Pass
Harmondsworth
Middlesex
UB7 0HD

Or by Fax 0208 750 7771

Upper Tribunal (Immigration and Asylum Chamber)
IA Yarl's Wood
Hearing Centre A
Twinwoods Business Park
Thurleigh Road
Bedfordshire
MK44 1FD

Or by Fax 0123 422 4411

You MUST enclose the following documents with this form –

- 1. A copy of the determination of the First-tier Tribunal**
- 2. A copy of the notice of refusal of permission to appeal by the First-tier Tribunal or refusal to admit the application for permission.**

If you do not send these documents your appeal may be delayed or not admitted.

You are also advised to enclose:

- 1. A copy of the grounds of appeal to the First-tier Tribunal**
- 2. Any other documents relevant to the application that were before that Tribunal**
- 3. Any written evidence in support of Part D and/or Part F.**

The Upper Tribunal will contact you when they have received this form.

If you have not received any correspondence within 5 working days contact the Tribunal Customer Service Centre on **+44 (0)845 6000877** or by email Customer.Service@tribunals.gsi.gov.uk. Please quote your appeal number whenever you call.

APPENDIX THREE

FORM N161

&

Form 40.2

Appellant's notice
(All appeals except small claims track appeals)

For Court use only	
Appeal Court Ref. No.	
Date filed	

Notes for guidance are available which will help you complete this form. Please read them carefully before you complete each section.



Section 1 Details of the claim or case you are appealing against

Claim or Case no.

Name(s) of the Claimant(s) Applicant(s) Petitioner(s)

Name(s) of the Defendant(s) Respondent(s)

Details of the party appealing ('The Appellant')

Name

Address (including postcode)

Tel No.	
Fax	
E-mail	

Details of the Respondent to the appeal

Name

Address (including postcode)

Tel No.	
Fax	
E-mail	

Details of additional parties (if any) are attached

Yes No

Section 2 Details of the appeal

From which court is the appeal being brought?

- The County Court at
- High Court
- Queen's Bench Division
 - Chancery Division
 - Family Division
- Other (please specify)

What is the name of the Judge whose decision you want to appeal?

What is the status of the Judge whose decision you want to appeal?

- District Judge or Deputy Circuit Judge or Recorder Tribunal Judge
- Master or Deputy High Court Judge or Deputy

What is the date of the decision you wish to appeal against?

To which track, if any, was the claim or case allocated?

- Fast track
- Multi-track
- Not allocated to a track

Nature of the decision you wish to appeal

- Case management decision Grant or refusal of interim relief
- Final decision A previous appeal decision

Details of additional parties (if any) are attached

Yes No

Section 3 Legal representation

Are you legally represented?

Yes No

If 'Yes', please give details of your solicitor below

Name of the firm of solicitors representing you

The address (including postcode) of the firm of solicitors representing you

Tel No.	
Fax	
E-mail	
DX	
Ref.	

Are you, the Appellant, in receipt of a Legal Aid Certificate or a Community Legal Service Fund (CLS F) certificate?

Yes No

Is the respondent legally represented?

Yes No

If 'Yes', please give details of the respondent's solicitor below

Name and address (including postcode) of the firm of solicitors representing the respondent

Tel No.	
Fax	
E-mail	
DX	
Ref.	

Section 4 Permission to appeal

Do you need permission to appeal?

Yes No

Has permission to appeal been granted?

Yes (Complete Box A)

No (Complete Box B)

Box A

Date of order granting permission
<input type="text"/>
Name of Judge granting permission
<input type="text"/>

Box B

I	<input type="text"/>
the Appellant('s solicitor) seek permission to appeal.	

If permission to appeal has been granted **in part** by the lower court, do you seek permission to appeal in respect of the grounds refused by the lower court?

Yes No

Section 5 Other information required for the appeal

Please set out the order (or part of the order) you wish to appeal against

Have you lodged this notice with the court in time?
(There are different types of appeal -
see Guidance Notes N161 A)

Yes No

If **'No'** you must complete
Part B of Section 9

Section 6 Grounds of appeal

Please state, in numbered paragraphs, **on a separate sheet** attached to this notice and entitled 'Grounds of Appeal' (also in the top right hand corner add your claim or case number and full name), why you are saying that the Judge who made the order you are appealing was wrong.

I confirm that the grounds of appeal are attached to this notice.

Section 7 Arguments in support of grounds for appeal

I confirm that the arguments (known as a 'Skeleton Argument') in support of the 'Grounds of Appeal' are set out **on a separate sheet** and attached to this notice.

OR

I confirm that the arguments (known as a 'Skeleton Argument') in support of the 'Grounds of Appeal' will follow within 14 days of filing this Appellant's Notice

Section 8 What are you asking the Appeal Court to do?

I am asking the appeal court to:-
(please tick the appropriate box)

- set aside the order which I am appealing
- vary the order which I am appealing and substitute the following order. Set out in the following space the order you are asking for:-

- order a new trial

Section 9 Other applications

Complete this section **only** if you are making any additional applications.

Part A

- I apply for a stay of execution. (You must set out in Section 10 your reasons for seeking a stay of execution and evidence in support of your application.)

Part B

- I apply for an extension of time for filing my appeal notice. (You must set out in Section 10 the reasons for the delay and what steps you have taken since the decision you are appealing.)

Part C

- I apply for an order that:

(You must set out in Section 10 your reasons and your evidence in support of your application.)

Section 10 Evidence in support

In support of my application(s) in Section 9, I wish to rely upon the following reasons and evidence:

Statement of Truth – This must be completed in support of the evidence in Section 10

I believe (The appellant believes) that the facts stated in this section are true.

Full name

Name of appellant's solicitor's firm

signed position or office held
Appellant ('s solicitor) (if signing on behalf of firm or company)

Section 11 Supporting documents

To support your appeal you should file with this notice all relevant documents listed below. To show which documents you are filing, please tick the appropriate boxes.

If you do not have a document that you intend to use to support your appeal complete the box over the page.

In the county court or High Court:

- three copies of the appellant's notice for the appeal court and three copies of the grounds of appeal;
- one additional copy of the appellant's notice and grounds of appeal for each of the respondents;
- one copy of the sealed (stamped by the court) order being appealed;
- a copy of any order giving or refusing permission to appeal; together with a copy of the judge's reasons for allowing or refusing permission to appeal; and
- a copy of the legal aid or CLSF certificate (if legally represented).

In the Court of Appeal:

- three copies of the appellant's notice and three copies of the grounds of appeal;
- one additional copy of the appellant's notice and one copy of the grounds of appeal for each of the respondent;
- one copy of the grounds of appeal on a separate sheet attached to each of the appellant's notices filed;
- one copy of the sealed (stamped by the court) order or tribunal determination being appealed;
- a copy of any order giving or refusing permission to appeal together with a copy of the judge's reasons for allowing or refusing permission to appeal;
- one copy of any witness statement or affidavit in support of any application included in the appellant's notice;
- where the decision of the lower court was itself made on appeal, a copy of the first order, the reasons given by the judge who made it and the appellant's notice of appeal against that order;
- in a claim for judicial review or a statutory appeal a copy of the original decision which was the subject of the application to the lower court;
- a copy of the order allocating the case to a track (if any)
- one copy of the skeleton arguments in support of the appeal or application for permission to appeal;
- a copy of the approved transcript of judgment; and
- a copy of the legal aid or CLSF certificate (if legally represented)

Reasons why you have not supplied a document and date when you expect it to be available: -

Title of document and reason not supplied	Date when it will be supplied

Section 12 The notice of appeal must be signed here

Signed Appellant('s Solicitor)

Form of application for leave to appeal

IN THE COURT OF SESSION

APPLICATION

for

LEAVE TO APPEAL

under (*specify provision of enactment under which application is made*)

by

[A.B.] (*designation and address*)

Applicant

against

Decision of [*or* Refusal of leave to appeal]

(*name of court or tribunal*)

- That on (*date*) the (*name of court or tribunal*) refused the application of the applicant for leave to appeal to the Court of Session against its decision to (*date*) refusing [*or* decided] (*briefly describe decision*). A copy of the decision of the (*name of court or tribunal*) [*and of the decision refusing leave to appeal*] is [*or* are] produced with this application.
- That the reasons given by the (*name of court or tribunal*) for refusing leave to appeal are (*specify*) [*or* are set out in the copy of its decision produced with this application].
- That the reasons given by the (*name of court or tribunal*) for its decision (*date*) against which leave to appeal is sought are (*specify*) [*or* are set out in the copy of the decision produced with this application].
- That the grounds on which the applicant seeks leave to appeal [*against the refusal of leave to appeal*] to the Court of Session are as follows:- (*set out the grounds in numbered sub-paragraphs*).
- That the grounds on which the applicant seeks to appeal against the decision of the (*name of court or tribunal*) of (*date*) are as follows:- (*set out the grounds in numbered sub-paragraphs*).

- That this application is made under (*specify provision of enactment*) and rule 40.2(2) [*or 41.2(3)*] of the Rules of the Court of Session 1994.

IN RESPECT WHEREOF

(*Signed by counsel or other person*

having a right of audience)

APPENDIX FOUR

PRACTICAL GUIDANCE: MCKENZIE FRIENDS

Practice guidance: McKenzie Friends (Civil and Family Courts)

1. This Guidance applies to civil and family proceedings in the Court of Appeal (Civil Division), the High Court of Justice, the County Courts and the Family Proceedings Court in the Magistrates' Courts.⁷ It is issued as guidance (**not** as a Practice Direction) by the Master of the Rolls, as Head of Civil Justice, and the President of the Family Division, as Head of Family Justice. It is intended to remind courts and litigants of the principles set out in the authorities and supersedes the guidance contained in *Practice Note (Family Courts: McKenzie Friends) (No 2) [2008] 1 WLR 2757*, which is now withdrawn.⁸ It is issued in light of the increase in litigants-in-person (litigants) in all levels of the civil and family courts.

The Right to Reasonable Assistance

2. Litigants have the right to have reasonable assistance from a layperson, sometimes called a McKenzie Friend (MF). Litigants assisted by MFs remain litigants-in-person. MFs have no independent right to provide assistance. They have no right to act as advocates or to carry out the conduct of litigation.

What McKenzie Friends may do

3. MFs may: i) provide moral support for litigants; ii) take notes; iii) help with case papers; iv) quietly give advice on any aspect of the conduct of the case.

What McKenzie Friends may not do

4. MFs may not: i) act as the litigants' agent in relation to the proceedings; ii) manage litigants' cases outside court, for example by signing court documents; or iii) address the court, make oral submissions or examine witnesses.

Exercising the Right to Reasonable Assistance

⁷ References to the judge or court should be read where proceedings are taking place under the Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991, as a reference to a justices' clerk or assistant justices' clerk who is specifically authorised by a justices' clerk to exercise the functions of the court at the relevant hearing. Where they are taking place under the Family Proceedings Courts (Children's Act 1989) Rules 1991 they should be read consistently with the provisions of those Rules, specifically rule 16A(5A).

⁸ *R v Leicester City Justices, ex parte Barrow* [1991] 260, *Chauhan v Chauhan* [1997] FCR 206, *R v Bow County Court, ex parte Pelling* [1999] 1 WLR 1807, *Attorney-General v Purvis* [2003] EWHC 3190 (Admin), *Clarkson v Gilbert* [2000] CP Rep 58, *United Building and Plumbing Contractors v Kajla* [2002] EWCA Civ 628, *Re O (Children) (Hearing in Private: Assistance)* [2005] 3 WLR 1191, *Westland Helicopters Ltd v Sheikh Salah Al-Hejailan (No 2)* [2004] 2 Lloyd's Rep 535, *Agassi v Robinson (Inspector of Taxes) (No 2)* [2006] 1 WLR 2126, *Re N (A Child) (McKenzie Friend: Rights of Audience) Practice Note* [2008] 1 WLR 2743

5. While litigants ordinarily have a right to receive reasonable assistance from MFs the court retains the power to refuse to permit such assistance. The court may do so where it is satisfied that, in that case, the interests of justice and fairness do not require the litigant to receive such assistance.
6. A litigant who wishes to exercise this right should inform the judge as soon as possible indicating who the MF will be. The proposed MF should produce a short curriculum vitae or other statement setting out relevant experience, confirming that he or she has no interest in the case and understands the MF's role and the duty of confidentiality.
7. If the court considers that there might be grounds for circumscribing the right to receive such assistance, or a party objects to the presence of, or assistance given by a MF, it is not for the litigant to justify the exercise of the right. It is for the court or the objecting party to provide sufficient reasons why the litigant should not receive such assistance.
8. When considering whether to circumscribe the right to assistance or refuse a MF permission to attend the right to a fair trial is engaged. The matter should be considered carefully. The litigant should be given a reasonable opportunity to argue the point. The proposed MF should not be excluded from that hearing and should normally be allowed to help the litigant.
9. Where proceedings are in *closed court*, i.e. the hearing is in chambers, is in private, or the proceedings relate to a child, the litigant is required to justify the MF's presence in court. The presumption in favour of permitting a MF to attend such hearings, and thereby enable litigants to exercise the right to assistance, is a strong one.
10. The court may refuse to allow a litigant to exercise the right to receive assistance at the start of a hearing. The court can also circumscribe the right during the course of a hearing. It may be refused at the start of a hearing or later circumscribed where the court forms the view that a MF may give, has given, or is giving, assistance which impedes the efficient administration of justice. However, the court should also consider whether a firm and unequivocal warning to the litigant and/or MF might suffice in the first instance.
11. A decision by the court not to curtail assistance from a MF should be regarded as final, save on the ground of subsequent misconduct by the MF or on the ground that the MF's continuing presence will impede the efficient administration of justice. In such event the court should give a short judgment setting out the reasons why it has curtailed the right to assistance. Litigants may appeal such decisions. MFs have no standing to do so.

12. The following factors should not be taken to justify the court refusing to permit a litigant receiving such assistance:
 - a. The case or application is simple or straightforward, or is, for instance, a directions or case management hearing;
 - b. The litigant appears capable of conducting the case without assistance;
 - c. The litigant is unrepresented through choice;
 - d. The other party is not represented;
 - e. The proposed MF belongs to an organisation that promotes a particular cause;
 - f. The proceedings are confidential and the court papers contain sensitive information relating to a family's affairs
13. A litigant may be denied the assistance of a MF because its provision might undermine or has undermined the efficient administration of justice. Examples of circumstances where this might arise are: i) the assistance is being provided for an improper purpose; ii) the assistance is unreasonable in nature or degree; iii) the MF is subject to a civil proceedings order or a civil restraint order; iv) the MF is using the litigant as a puppet; v) the MF is directly or indirectly conducting the litigation; vi) the court is not satisfied that the MF fully understands the duty of confidentiality.
14. Where a litigant is receiving assistance from a MF in care proceedings, the court should consider the MF's attendance at any advocates' meetings directed by the court, and, with regard to cases commenced after 1.4.08, consider directions in accordance with paragraph 13.2 of the Practice Direction Guide to Case Management in Public Law Proceedings.
15. Litigants are permitted to communicate any information, including filed evidence, relating to the proceedings to MFs for the purpose of obtaining advice or assistance in relation to the proceedings.
16. Legal representatives should ensure that documents are served on litigants in good time to enable them to seek assistance regarding their content from MFs in advance of any hearing or advocates' meeting.
17. The High Court can, under its inherent jurisdiction, impose a civil restraint order on MFs who repeatedly act in ways that undermine the efficient administration of justice.

Rights of audience and rights to conduct litigation

18. MFs do **not** have a right of audience or a right to conduct litigation. It is a criminal offence to exercise rights of audience or to conduct litigation unless properly qualified and authorised to do so by an appropriate regulatory body or, in the case of an otherwise unqualified or unauthorised individual (i.e., a lay individual including a MF), the court grants such rights on a case-by-case basis.⁹
19. Courts should be slow to grant any application from a litigant for a right of audience or a right to conduct litigation to any lay person, including a MF. This is because a person exercising such rights must ordinarily be properly trained, be under professional discipline (including an obligation to insure against liability for negligence) and be subject to an overriding duty to the court. These requirements are necessary for the protection of all parties to litigation and are essential to the proper administration of justice.
20. Any application for a right of audience or a right to conduct litigation to be granted to any lay person should therefore be considered very carefully. The court should only be prepared to grant such rights where there is good reason to do so taking into account all the circumstances of the case, which are likely to vary greatly. Such grants should not be extended to lay persons automatically or without due consideration. They should not be granted for mere convenience.
21. Examples of the type of special circumstances which have been held to justify the grant of a right of audience to a lay person, including a MF, are: i) that person is a close relative of the litigant; ii) health problems preclude the litigant from addressing the court, or conducting litigation, and the litigant cannot afford to pay for a qualified legal representative; iii) the litigant is relatively inarticulate and prompting by that person may unnecessarily prolong the proceedings.
22. It is for the litigant to persuade the court that the circumstances of the case are such that it is in the interests of justice for the court to grant a lay person a right of audience or a right to conduct litigation.
23. The grant of a right of audience or a right to conduct litigation to lay persons who hold themselves out as professional advocates or professional MFs or who seek to exercise such rights on a regular basis, whether for reward or not, will however **only** be granted in exceptional circumstances. To do otherwise would tend to subvert the will of Parliament.

⁹ Legal Services Act 2007 s12 – 19 and Schedule 3.

24. If a litigant wants a lay person to be granted a right of audience, an application must be made at the start of the hearing. If a right to conduct litigation is sought such an application must be made at the earliest possible time and must be made, in any event, before the lay person does anything which amounts to the conduct of litigation. It is for litigants to persuade the court, on a case-by-case basis, that the grant of such rights is justified.
25. Rights of audience and the right to conduct litigation are separate rights. The grant of one right to a lay person does not mean that a grant of the other right has been made. If both rights are sought their grant must be applied for individually and justified separately.
26. Having granted either a right of audience or a right to conduct litigation, the court has the power to remove either right. The grant of such rights in one set of proceedings cannot be relied on as a precedent supporting their grant in future proceedings.

Remuneration

27. Litigants can enter into lawful agreements to pay fees to MFs for the provision of reasonable assistance in court or out of court by, for instance, carrying out clerical or mechanical activities, such as photocopying documents, preparing bundles, delivering documents to opposing parties or the court, or the provision of legal advice in connection with court proceedings. Such fees cannot be lawfully recovered from the opposing party.
28. Fees said to be incurred by MFs for carrying out the conduct of litigation, where the court has not granted such a right, cannot lawfully be recovered from either the litigant for whom they carry out such work or the opposing party.
29. Fees said to be incurred by MFs for carrying out the conduct of litigation after the court has granted such a right are in principle recoverable from the litigant for whom the work is carried out. Such fees cannot be lawfully recovered from the opposing party.
30. Fees said to be incurred by MFs for exercising a right of audience following the grant of such a right by the court are in principle recoverable from the litigant on whose behalf the right is exercised. Such fees are also recoverable, in principle, from the opposing party as a recoverable disbursement: CPR 48.6(2) and 48(6)(3)(ii).

Personal Support Unit & Citizen's Advice Bureau

31. Litigants should also be aware of the services provided by local Personal Support Units and Citizens' Advice Bureaux. The PSU at the

Royal Courts of Justice in London can be contacted on 020 7947 7701, by email at cbps@bello.co.uk or at the enquiry desk. The CAB at the Royal Courts of Justice in London can be contacted on 020 7947 6564 or at the enquiry desk.

Lord Neuberger of Abbotsbury, Master of the Rolls

Sir Nicholas Wall, President of the Family Division

12 July 2010

APPENDIX FIVE

PRACTICE STATEMENTS

**IMMIGRATION AND ASYLUM CHAMBERS OF THE
FIRST-TIER TRIBUNAL AND THE UPPER TRIBUNAL**



TRIBUNALS
JUDICIARY

PRACTICE STATEMENTS

IMMIGRATION AND ASYLUM CHAMBERS OF THE FIRST-TIER TRIBUNAL AND THE UPPER TRIBUNAL

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PART 3

PRACTICE STATEMENTS FOR THE IMMIGRATION AND ASYLUM CHAMBER OF THE UPPER TRIBUNAL

6. Composition of Immigration and Asylum Chamber of the Upper Tribunal
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PRACTICE STATEMENTS FOR THE IMMIGRATION AND ASYLUM CHAMBERS OF THE FIRST-TIER TRIBUNAL AND THE UPPER TRIBUNAL

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PART 1
PRELIMINARY

1. Interpretation, etc.

1.1 In these Practice Statements:

“the 2007 Act” means the Tribunals, Courts and Enforcement Act 2007;

“the 2008 Order” means the First-tier Tribunal and Upper Tribunal (Composition of Tribunal) Order 2008;

“Chamber President” means the President of the Immigration and Asylum Chamber of the First-tier Tribunal or of the Upper Tribunal, as the case may be;

“CMR hearing” means a case management review hearing;

“determination” includes any decision of the Tribunal;

“final determination” is a decision carrying a right of appeal under section 13 of the 2007 Act;

“First-tier rule”, followed by a number, means the rule bearing that number in the Asylum and Immigration Tribunal (Procedure) Rules 2005;

“First-tier judge” means a judge of the First-tier Tribunal;

“other member” means a person who, immediately before the repeal by the Transfer of Functions Order of section 5(2)(d) of the 2007 Act, was a member of the Upper Tribunal by reason of that enactment;

“Practice Directions” means the Practice Directions - *Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal* (dated 10 February 2010); and “Practice Direction”, followed by a number, means the Direction bearing that number in the Practice Directions;

“Senior President” means the Senior President of Tribunals;

“Transfer of Functions Order” means the Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (SI/2010/21);

“The Tribunal” means the Immigration and Asylum Chamber of the First-tier Tribunal or of the Upper Tribunal, as the case may be;

“Upper Tribunal judge” means a judge of the Upper Tribunal;

“UT Rules” means the Tribunal Procedure (Upper Tribunal) Rules 2008; and “UT rule”, followed by a number, means the rule bearing that number in the UT Rules.

- 1.2 Other expressions used in these Practice Statements have the same meanings as in the 2007 Act.
- 1.3 Any reference in these Practice Statements to an enactment is a reference to that enactment as amended by or under any other enactment.
- 1.4 These revised Practice Statements come into force on 25 September 2010.
- 1.5 These Practice Statements apply, as appropriate, in relation to transitional cases to which Schedule 4 to the Transfer of Functions Order applies; and references to the First-tier Tribunal and the Upper Tribunal shall be construed accordingly.

PART 2

PRACTICE STATEMENTS FOR THE IMMIGRATION AND ASYLUM CHAMBER OF THE FIRST-TIER TRIBUNAL

2. *Composition of Immigration and Asylum Chamber of the First-tier Tribunal*

2.1 Subject to paragraph 2.2, any decision that falls to be decided by the First-tier Tribunal in respect of any matter specified in the first column below is to be decided by the number and type of members specified in the second column.

- | | | |
|-----|--|---|
| (1) | Whether notice of appeal given in time/whether to extend time for appealing (except where First-tier rule 11 applies)/refusal to accept notice of appeal (First-tier rule 9) | One First-tier judge |
| (2) | Whether to extend time for appealing where First-tier rule 11 applies (special provisions for imminent removal cases) | One First-tier judge, from those approved by the Senior President to make such decisions |
| (3) | All appeals or other matters which are not specified below | One First-tier judge or a panel of two or three members, at least one of whom must be a First-tier judge and no more than one |

		of whom may be an other member
(4)	The giving of any directions under First-tier rule 45(6)	The Chamber President
(5)	The giving of any other directions (whether or not at case management review or other hearings)	One First-tier judge
(6)	Appeals which are to be determined without a hearing	One First-tier judge
(7)	Applications for bail and other bail matters	One First-tier judge
(8)	Issue of a witness summons	One First-tier judge
(9)	Any determination that an appeal be dismissed as abandoned or finally determined	One First-tier judge
(10)	Review under First-tier rule 60(1A) and any resulting action under that paragraph	The Chamber President
(11)	Applications for permission to appeal to Upper Tribunal	One First-tier judge, from those approved by the Senior President to deal with such applications
(12)	Review under section 9 of the 2007 Act of a decision (consequent on an application for permission to appeal) and any resulting action under that section	One First-tier judge, from those approved by the Senior President to deal with section 9 matters

2.2 Any of the matters specified in paragraph 2.1(5), (7), (8), or (9) may be decided by the members of the Tribunal deciding an appeal or other matter pursuant to paragraph 2.1(3).

- 2.3 Any decision that an appeal or other matter is to be decided by more than one member pursuant to paragraph 2.1(3) is that of the Chamber President; but such a decision may be delegated to another First-tier judge.

3 *Where the Tribunal may not accept a notice of appeal*

- 3.1 First-tier rule 9 (where the Tribunal may not accept a notice of appeal) imposes a duty on the Tribunal not to accept an invalid notice of appeal (in the circumstances described in rule 9(1A)) and to serve notice to this effect on the person who gave the notice of appeal and on the respondent.
- 3.2 The Tribunal will scrutinise a notice of appeal as soon as practicable after it has been given. First-tier rule 9 makes no provision for the issue of validity to be determined by means of a hearing or by reference to any representations of the parties.
- 3.3 Once the Tribunal has served the notice described in paragraph 3.1, First-tier rule 9 provides that the Tribunal must take no further action in relation to the notice of appeal. The decision under First-tier rule 9 is, accordingly, a procedural or preliminary decision.
- 3.4 The fact that a hearing date may have been given to the parties does not mean that the appeal must be treated as valid. Accordingly, if at a hearing (including a CMR hearing) it transpires that the notice of appeal does not relate to a decision against which there is, in the circumstances, an exercisable right of appeal, the Tribunal must so find; but it will do so in the form of a determination, rather than by means of a notice under First-tier rule 9.

4 *Review of decision of First-tier Tribunal*

- 4.1 On an application to the First-tier Tribunal for permission to appeal under section 11 of the 2007 Act (right to appeal to Upper Tribunal) on a point of law arising from a decision, the First-tier Tribunal may review that decision pursuant to First-tier rule 26, only if it is satisfied that there was an error of law in that decision.
- 4.2 Following such a review, the First-tier Tribunal may (subject to section 9(10)) set the decision aside under section 9(4)(c) and re-decide the matter concerned under section 9(5)(a). The First-tier Tribunal is, however, likely to adopt this course only if it is satisfied that:-
- (a) the effect of any error of law has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal;
or

- (b) there are highly compelling reasons why the matter should be re-decided by the First-tier Tribunal. (Such reasons are likely to be rare.)
- 4.3 Nothing in this Practice Statement affects the operation of First-tier rule 60 (correction of orders and determinations).
- 5 ***Record of proceedings***
- 5.1 The Tribunal shall keep a record of proceedings of any hearing and attach that record to the Tribunal's case file.

PART 3

PRACTICE STATEMENTS FOR THE IMMIGRATION AND ASYLUM CHAMBER OF THE UPPER TRIBUNAL

- 6 ***Composition of Immigration and Asylum Chamber of the Upper Tribunal***
- 6.1 Subject to paragraph 6.2 to 6.5, any matter that falls to be decided by the Upper Tribunal is to be decided by one Upper Tribunal judge.
- 6.2 Where the Senior President or the Chamber President considers that the matter involves a question of law of special difficulty or an important point of principle or practice, or that it is otherwise appropriate, the matter is to be decided by two or three Upper Tribunal judges.
- 6.3 Where the Senior President or the Chamber President considers that it is appropriate, the matter is to be decided by:-
 - (a) one Upper Tribunal judge and one other member; or
 - (b) two Upper Tribunal judges and one other member.
- 6.4 An application for permission to appeal to the Upper Tribunal is to be decided by one Upper Tribunal judge, from those approved by the Senior President or the Chamber President.
- 6.5 Nothing in paragraph 6.2 to 6.4 prevents any procedural or ancillary matter regarding the case concerned from being decided by any Upper Tribunal judge.
- 6.6 Any decision of the Chamber President pursuant to paragraph 6.2 or 6.3 may be delegated by the Chamber President to another Upper Tribunal judge.

7 *Disposal of appeals in Upper Tribunal*

- 7.1 Where under section 12(1) of the 2007 Act (proceedings on appeal to the Upper Tribunal) the Upper Tribunal finds that the making of the decision concerned involved the making of an error on a point of law, the Upper Tribunal may set aside the decision and, if it does so, must either remit the case to the First-tier Tribunal under section 12(2)(b)(i) or proceed (in accordance with relevant Practice Directions) to re-make the decision under section 12(2)(b)(ii).
- 7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-
- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
 - (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.
- 7.3 Remaking rather than remitting will nevertheless constitute the normal approach to determining appeals where an error of law is found, even if some further fact finding is necessary.

PART 4

PRACTICE STATEMENTS FOR THE IMMIGRATION AND ASYLUM CHAMBERS OF THE FIRST-TIER TRIBUNAL AND THE UPPER TRIBUNAL

8 *Presiding member*

- 8.1 Where more than one member of the Tribunal is to decide a matter, the presiding member for the purposes of article 7 of the 2008 Order and this Practice Statement is:-
- (a) the judge; or
 - (b) the senior judge, where the Tribunal contains more than one judge.

9 *Transfer of Proceedings*

9.1 Where:-

- (a) the Tribunal (“the original Tribunal”) has started to hear an appeal but has not completed the hearing or given its determination; and
- (b) the Chamber President decides that it is not practicable for the original Tribunal to complete the hearing or give its determination without undue delay,

the Chamber President may direct the appeal to be heard by a differently constituted Tribunal (“the new Tribunal”).

9.2 Where an appeal has been transferred under paragraph 9.1:

- (a) any documents sent to or given by the original Tribunal shall be deemed to have been sent to or given by the new Tribunal; and
- (b) the new Tribunal will deal with the appeal commenced before it.

9.3 Without prejudice to paragraph 9.1, the Chamber President may transfer proceedings in the circumstances described in Practice Direction 3 (procedure on appeal); and paragraph 9.2(a) shall apply in the case of such a transfer as it applies in the case of a transfer under paragraph 9.1.

10 *Format etc of determinations*

10.1 In order to ensure consistency in the formatting of determinations, every determination of the Tribunal must:-

- (a) state in the heading whether the appeal is being determined following a hearing or without a hearing;
- (b) be laid out in sequentially numbered paragraphs; and
- (c) be signed and dated at its end or employ such electronic or other methods as the Senior President or the Chamber President may approve for signifying that the determination is finalised.

10.2 Since Article 8 of the 2008 Order provides that the decision of the majority is the decision of the Tribunal (and that the presiding member has a casting vote), where the jurisdiction of the Tribunal is exercised by more than one member the resulting determination or other decision will not express any dissenting view or indicate that it is that of a majority.

11. *Reporting of determinations*

- 11.1 This Practice Statement is to be read in conjunction with Practice Direction 11 (citation of unreported determinations) and Practice Statement – *Form of decisions and neutral citation First-tier Tribunal and Upper Tribunal on or after 3 November 2008* (31 October 2008).
- 11.2 The decision whether to report a determination is that of the Tribunal and it is not perceived to be an issue in which the parties to the appeal have an interest.
- 11.3 A determination is reportable only if it follows a hearing or other consideration where the jurisdiction of the Tribunal was exercised by the Senior President, the Chamber President or an Upper Tribunal judge who is not a Deputy judge (whether or not sitting alone and, in the case of an Upper Tribunal judge, whether sitting as such or as a First-tier judge).
- 11.4 A final determination which not is reported will be anonymised (where appropriate), treated as an unreported determination for the purposes of the Tribunal’s website and entered as such on that website.
- 11.5 The Tribunal’s website is the only official source of the determinations of the Tribunal.

**SIR JEREMY SULLIVAN
SENIOR PRESIDENT OF TRIBUNALS**

25 September 2012

APPENDIX SIX

Sample Directions

SAMPLE DIRECTIONS IN ASYLUM AND DEPORTATION APPEALS



The Upper Tribunal (Immigration and Asylum Chamber)

DIRECTIONS TO PARTIES

1. Any response which the respondent to this appeal wishes to make under rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 must be sent or delivered to the Upper Tribunal so that it is received no later than **14 days** after the respondent was sent notice that permission to appeal had been granted. At the same time, a copy of the response must be sent to the appellant.
2. The parties are reminded of the need to make an application pursuant to rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008, where appropriate, and of the requirements of that rule¹⁰.
3. The parties shall prepare for the forthcoming hearing on the basis that it will be confined to whether the determination of the First-tier Tribunal should be set aside for legal error and, if so, whether the decision in the appeal can be re-made without having to hear oral evidence; in which eventuality the Tribunal is likely to proceed immediately with a view to re-making the decision.
4. No interpreter will be booked for the forthcoming hearing, unless a party is unrepresented and required an interpreter before the First-tier Tribunal.

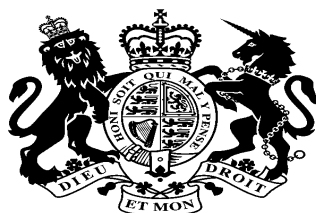
¹⁰ (2A) In an asylum case or an immigration case-

- (a) if a party wishes the Upper Tribunal to consider evidence that was not before the First-tier Tribunal, that party must send or deliver a notice to the Upper Tribunal and any other party-
 - (i) indicating the nature of the evidence; and
 - (ii) explaining why it was not submitted to the First-tier Tribunal; and
- (b) when considering whether to admit evidence that was not before the First-tier Tribunal, the Upper Tribunal must have regard to whether there has been unreasonable delay in producing that evidence.

5. The parties are to serve on the Upper Tribunal and the other party, not later than **21 days** after these directions were sent:
 - (a) an indexed and paginated bundle, containing all documentary evidence upon which it is intended to rely at the forthcoming hearing, pursuant to rule 15(2A); and
 - (b) where it is intended to develop the grounds of appeal, a skeleton argument (with authorities).
6. A party is not required to re-serve any documentary material that he or she has previously filed with the First-tier Tribunal; but in **all** cases an index of **all** material to be relied on, including that previously filed, shall be served on the Upper Tribunal and the other party, not later than **21 days** after these directions were sent.
7. The parties shall be aware that a failure to serve evidence as required by these directions and/or rule 15(2A) may lead to the Upper Tribunal refusing to admit that evidence.

Upper Tribunal Judge Southern

SAMPLE DIRECTIONS FOR IMMIGRATION (NON-ASYLUM) APPEALS



The Upper Tribunal (Immigration and Asylum Chamber)

DIRECTIONS TO PARTIES

1. Any response which the respondent to this appeal wishes to make under rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 must be sent or delivered to the Upper Tribunal so that it is received no later than **14 days** after the respondent was sent notice that permission to appeal had been granted. At the same time, a copy of the response must be sent to the appellant.
2. The parties shall prepare for the forthcoming hearing on the basis that, if the Upper Tribunal decides to set aside the determination of the First-tier Tribunal, any further evidence, including supplementary oral evidence, that the Upper Tribunal may need to consider if it decides to re-make the decision, can be so considered at that hearing.
3. No interpreter will be booked for the forthcoming hearing, unless-
 - (a) a party is unrepresented and required an interpreter before the First-tier Tribunal; or
 - (b) a party makes a written request to the Upper Tribunal for an interpreter (specifying language, any dialect and the reasons for making the request), not later than **7 days** after these directions were sent. The Tribunal is likely to grant such a request only if it considers there is a real likelihood that the interpreter will be required.
4. The parties are reminded of the need to make an application pursuant to rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008, where appropriate, and of the requirements of that rule¹¹.

¹¹ (2A) In an asylum case or an immigration case-

- (a) if a party wishes the Upper Tribunal to consider evidence that was not before the First-tier Tribunal, that party must send or deliver a notice to the Upper Tribunal and any other party-
 - (i) indicating the nature of the evidence; and

5. The parties shall serve on the Upper Tribunal and the other party, not later than **21 days** after these directions were sent:
 - (a) an indexed and paginated bundle, containing all documentary evidence upon which it is intended to rely at the forthcoming hearing, pursuant to rule 15(2A); and
 - (b) where it is intended to develop the grounds of appeal, a skeleton argument (with authorities).
6. A party is not required to re-serve any documentary material that he or she has previously filed with the First-tier Tribunal; but in **all** cases an index of **all** material to be relied on, including that previously filed, shall be served on the Upper Tribunal and the other party, not later than **21 days** after these directions were sent.
7. The parties shall be aware that a failure to serve evidence as required by these directions and/or rule 15(2A) may lead to the Upper Tribunal refusing to admit that evidence.

Upper Tribunal Judge Southern

(ii) explaining why it was not submitted to the First-tier Tribunal; and
(b) when considering whether to admit evidence that was not before the First-tier Tribunal, the Upper Tribunal must have regard to whether there has been unreasonable delay in producing that evidence.