



FIRST-TIER TRIBUNAL (IMMIGRATION AND ASYLUM) CHAMBER HEARINGS

NOTICE

In view of the rapidly changing circumstances created by the Covid-19 pandemic, the President of the First-tier Tribunal (IAC) has directed that all hearings up 30 April 2020 will be converted to Case Management Hearings (CMR) via telephone or Skype which will take place on the original hearing date in a time slot to be allocated.

You must provide direct contact numbers and email address for the Tribunal to contact you and comply with the following directions:

1. All parties will be expected to be available 5 minutes before the allocated time
2. The parties remain free to make any application to the Tribunal at any time.
3. Any witness statements and other evidence upon which the Appellant intends to rely must be sent electronically to the Tribunal and to the Respondent together with written submissions/skeleton argument 5 working days before the CMR to ecorrespondence@Justice.gov.uk
4. At the CMR the Respondent will be directed to serve a response to those written submissions by email to the Tribunal and to the Appellant's representatives within 14 days and in default of such response it will be assumed that the Respondent does not take issue with those submissions.
5. The submissions and the response together with all the evidence put forward will be considered by a Judge who will consider, having given the parties an opportunity to make written representations (rule 25(2)) whether the appeal can be justly determined without a hearing (rule 25(1)(g)).
6. In cases concerning international protection or the revocation of international protection the Appellant, if represented, must set out at the commencement of the skeleton argument a summary of the Appellant's case together with a schedule of issues as if the Pilot on-line Digital Pilot Directions applied (a copy of which are attached) and the Respondent must respond accordingly.

7. Where it is not considered appropriate for the matter to be dealt with, without a hearing, consideration will be given to the hearing of this appeal by remote means. To that end each party must provide at the CMR or before
- (a) the means by which they engage with the Tribunal [the Tribunal expects all representatives to have access to Skype or Skype for Business];
 - (b) the location of the appellant;
 - (c) the location of each witness, if any;
 - (d) language of interpreters if not already provided;
 - (e) The number of pages in the bundle of documents to be relied upon. Any documents provided to the Tribunal must be in pdf format and reduced to the minimum number of documents required. For the avoidance of doubt generic bundles will not be accepted.

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Resident Judge J F W Phillips

Date: 23 March 2020



**FIRST-TIER TRIBUNAL (IAC) ON-LINE DIRECTIONS
(all centres)**

PILOT DIRECTIONS

1. Introduction

- 1.1 These directions are issued to the representatives who have kindly agreed to take part in the Reform Online Pilot.

- 1.2 The Pilot marks an important step in the reform of the Tribunal pursuant to various recommendations made in the JUSTICE report entitled *Immigration and Asylum Appeals – a Fresh Look*. The online system has been designed with judicial oversight and is now in its ‘Private Beta’ (testing and evaluation) phase, during which it will be used by the respondent and by the representatives who have agreed to participate in this Pilot.

- 1.3 The Private Beta phase will play a key role in perfecting the online appeals process and it is imperative that users of the system keep a record of any observations they might have about it, since there will be regional meetings at which all participants will be invited to provide their feedback. Those meetings will be held at the end of the Pilot, however, and raising concerns about the operation of the system during the Pilot is unlikely to be considered to be a good reason for failing to comply with the directions which follow.

- 1.4 Alongside the development of the online system, the Tribunal has developed a new process for appeals. It is anticipated that this system – which will be facilitated through the online portal – will ultimately yield considerable benefits for appellants and respondents alike, and in turn for the Tribunal and for the public purse. The intention is that those cases which are bound to succeed on appeal will be identified more quickly than at present, and that

the focus of those cases which are ultimately to be contested by the respondent will be narrowed considerably. It is pursuant to those goals, and in furtherance of the overriding objective, therefore, that the Tribunal issues these directions, which apply only to cases within the Pilot.

1.5 The parties are expected to comply with the timetable set out below in all Pilot cases. Each appeal will be supervised by a Tribunal Case Worker ("TCW"), however, and there is liberty to apply to a TCW or, on review, a judge, in order to seek variation of a stipulated deadline.

1.6 The directions set out below are issued by the Resident Judges under the Case Management powers conferred by rule 4 of the Tribunal Procedure Rules (FtT)(IAC) 2014. These are not Practice Directions issued by the Senior President of Tribunals or the President of the IAC under s23 of the Tribunals, Courts and Enforcement Act 2007.

2. Provision of Documents

2.1 This direction refers throughout to documents being 'provided' to the Tribunal. The use of this term is intentional and reflects the use of the online system. Documents are not filed with the Tribunal and served upon the other party under this Pilot; a document is provided by uploading it to the online system in a legible form, whereupon email notification is automatically sent to the parties that a new document has become available. Time starts to run from the point that the document is provided in this way, rather than the time that a document is sent or received.

3. Procedure

3.1 The process which will be followed within the Pilot is set out in the following paragraphs. A timetable appears at the foot of the document for ease of reference.

3.2 Grounds of appeal are not required when a notice of appeal is provided to the Tribunal online. The appellant provides notification of his appeal online, without further particulars being required at that stage.

- 3.3 *Respondent's Bundle.* Not later than 14 days after the Tribunal is provided with the notice of appeal, the respondent must provide a bundle which complies with rule 24(1) of the Procedure Rules. The respondent must also include within that bundle, amongst other documents, any evidence which was submitted by the appellant in support of the application which led to the decision under appeal.
- 3.4 *Appellant's Skeleton Argument.* After the respondent has provided his bundle of documents, the appellant must provide an Appeal Skeleton Argument ("ASA"). In a protection appeal, the ASA must be provided not later than 28 days after the respondent's bundle is provided, or 42 days after the notice of appeal, whichever is the later. The intention is that an appellant in a protection claim will always have at least six weeks from lodging their appeal.
- 3.5 Any advocate who prepares a skeleton argument should have regard to what was said by Jackson LJ (with whom Lewison and Treacy LJJ agreed) at [52]-[57] of Inplayer v Thorogood [2014] EWCA Civ 1511. The Practice Directions to CPR Part 52 do not apply directly to appeals to the FtT(IAC), however, and ASAs in this Chamber must comply with the following.
- 3.6 The purpose of an ASA is to set out as concisely as practicable the arguments upon which an appellant intends to rely. An ASA must contain three sections: a summary of the appellant's case; a schedule of issues; and the appellant's submissions on those issues. A template is available on the portal.
- 3.7 An ASA must:
- be concise;
 - be set out in numbered paragraphs;
 - not include extensive quotations from documents or authorities;
 - engage expressly with the decision under challenge;
 - be cross-referenced to any relevant document in the appellant's bundle [AB/x] or the respondent's bundle [RB/x]
 - not exceed 10 pages and should certainly be no longer than 20 pages of A4.
 - be in no less than 12-point type with line spacing of not less than 1.5.

- 3.7.1 *Summary of the Appellant's Case.* All ASAs must contain a concise summary of the appellant's case at the start. The purpose of this summary is to distill the facts upon which the appellant relies and which, in the appellant's submission, justify the relief sought. This summary should not advance any argument, nor should it contain reference to the law.
- 3.7.2 *Schedule of Issues.* In all cases, the ASA must contain a schedule of issues, the resolution of which are said by the appellant to be determinative of the appeal in his favour.
- 3.7.3 The issues must be identified concisely in a sequence of numbered points, for example as follows:

The appellant appeals against the respondent's decision to refuse her human rights claim for entry clearance as the spouse of a settled person. Having regard to the requirements of Appendix FM of the Immigration Rules and the reasons given by the respondent for refusing the application, it is submitted that the issues which arise are as follows, and that resolution of these issues in the appellant's favour should result in a decision to allow the appeal on Article 8 ECHR grounds:

- 1. Are the appellant and the sponsor validly married?*
- 2. Is their marriage genuine and subsisting?*
- 3. Does the sponsor earn in excess of the Minimum Income Requirement?*
- 4. If not, are there compelling circumstances which render the appellant's exclusion unlawful under section 6 HRA 1998?*

- 3.7.4 *Submissions.* Having set out a summary of the appellant's factual case and the schedule of issues, the ASA must set out the appellant's submissions on the issues. Those submissions must comply with the guidance in 3.5-3.7 above and representatives must note, in particular, that it is imperative that the ASA engages expressly with each of the grounds upon which the appellant's application was refused.

- 3.7.5 In an appeal against the refusal of a protection claim, for example, the ASA must engage with questions of credibility, sufficiency of protection and internal relocation where such issues have been raised by the respondent. In an appeal against the refusal of a human rights claim, for example, the ASA should identify the articles of the ECHR relied upon, the manner in which any qualified articles are engaged and the reasons why any decision taken under the Immigration Rules is said to be wrong. It is not possible to provide a more prescriptive template but the submissions must, in summary, provide a reasoned response to each of the grounds of refusal.
- 3.8 *Appellant's Bundle.* Where the ASA refers to material which is not included in the respondent's bundle, that additional evidence must be provided to the Tribunal in an indexed and paginated bundle at the same time as the ASA. There is no need to duplicate material which is already to be found within the respondent's bundle and bundles which contain substantial duplication are likely to be rejected by a TCW.
- 3.9 *Respondent's Review.* In all cases, the respondent is required to undertake a comprehensive review of the appellant's case, taking into account the ASA and any bundle of documents supplied by the appellant. The respondent must also particularise any additional grounds of refusal. The respondent must provide the Tribunal with the result of that review by way of a response, within fourteen days of the ASA being provided to the Tribunal.
- 3.10 Pro-forma or standardised response templates will not be accepted by the Tribunal. The Review must engage expressly with the submissions made and the evidence provided to the Tribunal. The respondent will also note that appeals will not be considered for listing unless and until this important stage has been fully and properly completed.
- 3.11 *Counter schedule.* The respondent must, at the same time as the review, respond to the appellant's schedule of issues. If the appeal is to be contested, the respondent must indicate which issues are conceded and which remain in issue. Where further grounds are to be raised, they must be clearly identified

in the respondent's counter schedule. A counter schedule in response to the example at 3.11 may be as follows:

1. *The validity of the marriage is conceded in light of the further letter from the Registrar at p45 of the appellant's bundle.*
2. *The genuineness and subsistence of the marriage is conceded in light of the additional evidence at pp23-79 of the appellant's bundle.*
3. *The ground of refusal in relation to the Minimum Income Requirement is maintained as the appellant has still not produced the evidence required by Appendix FM-SE.*
4. *The respondent maintains that there are no compelling circumstances which warrant a grant of entry clearance outside the Immigration Rules.*
5. *In addition, and for the reasons given at [3]-[4] of the Review, the respondent submits that the appellant falls for refusal on Suitability grounds due to his conviction.*

3.12 ASAs and responses which do not comply with this Practice Direction will not be accepted by the Tribunal and a compliant replacement will be required.

3.13 Upon completion of the steps above, the appeal will be actively case managed by a TCW and/or by a judge.

3.14 For the avoidance of doubt, any timescale or requirement set out above may be varied by a TCW or a judge but the parties must, in the absence of any such variation, assume that the procedure set out above will be followed.

4 Timetable

4.7 Subject to directions given by a judge or a TCW, the parties will be expected to adhere to the following timetable:

Period within which step is to be taken	Action
Day 1	Notice of appeal provided to Tribunal
Not later than 14 days after notice of appeal	Respondent's bundle ("RB") must be provided
28 days after provision of RB or 42 days after notice of appeal, whichever is later.	Appellant must provide: (i) Appeal Skeleton Argument (ii) Bundle of evidence in support (iii) Schedule of issues
14 days after provision of appellant's ASA, schedule of issues and evidence	Respondent must provide: (i) Response to appellant's case (ii) Particulars of any disagreement with appellant's schedule of issues