ASYLUM AND IMMIGRATION TRIBUNAL

PRACTICE DIRECTIONS

The Asylum and Immigration Tribunal ("the Tribunal") is created by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 ("the 2004 Act"). It replaces the Immigration Appellate Authority ("the IAA"), which consisted of two tiers: adjudicators and the Immigration Appeal Tribunal ("the IAT").

As a result of the replacement of the IAA by the Tribunal, all practice directions made by the Chief Adjudicator and by the President of the IAT cease to have effect as at 4 April 2005, when the Tribunal is established, except to such extent as may be necessary for the purpose of giving effect to any transitional provisions under the 2004 Act.

The directions which follow are intended to regulate the proceedings, practice and procedure of the Tribunal from its inception on 4 April 2005. The directions must be read in conjunction with the Nationality, Immigration and Asylum Act 2002 (as amended by the 2004 Act) and the subordinate legislation made thereunder, in particular the Asylum and Immigration Tribunal (Procedure) Rules 2005 ("the Rules").

Certain of the directions operate not only in relation to notices of appeal given on or after 4 April 2005 but also in relation to notices given before that date, including cases where, for example, an appeal to an adjudicator or to the IAT was pending immediately before that date. Reference should be made to the transitional provisions contained in the primary and secondary legislation.

A number of Guidance Notes were issued by the Chief Adjudicator (and Deputy Chief Adjudicator) between 2001 and 2004, covering issues such as sitting by part-time adjudicators, unrepresented appellants and bail proceedings.

Unless and until the Tribunal issues its own guidance, members of the Tribunal will have regard to these Guidance Notes, subject to any qualifications or modifications necessary as a result of the creation of the Tribunal and of any changes in the relevant legislation.

A list of the Guidance Notes is contained in Annex C.

Notes: The directions which follow are made under section 107 of the 2002 Act and paragraph 7 of Schedule 4 to that Act.
Any failure to comply with these directions does not of itself invalidate any decision made by the Tribunal.

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Annexes

1 *Interpretation*

1.1 In these directions:

"the 2002 Act" means the Nationality, Immigration and Asylum Act 2002 (as amended); and any reference in these directions to a numbered section or Schedule, without more, is a reference to the relevant section or Schedule in the 2oo2 Act;

"the 2004 Act" means the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004;

"adjudicator" means an adjudicator appointed, or treated as appointed, under section 81;

"the Commencement Order" means the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (Commencement No. 5 and Transitional Provisions) Order 2005;

" CMR hearing" means a case management review hearing;

"fast track appeal" means an appeal to which Part 2 of the Fast Track Rules applies;

"the Fast Track Rules" means the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005;

"the Fast Track Time Limits Order" means the Asylum and Immigration (Fast Track Time Limits) Order 2005;

"the IAT" means the Immigration Appeal Tribunal;

"legally qualified member of the Tribunal" has the meaning given by paragraph 2 of Schedule 4;

"the President" means the President of the Tribunal;

"the Rules" means the Asylum and Immigration Tribunal (Procedure) Rules 2005 (as amended); and any reference in these directions to a numbered rule, without more, is a reference to the relevant provision of the Rules;

"the Tribunal" means the Asylum and Immigration Tribunal.

1.2 Other expressions used in these directions have the same meaning as in the Rules or the 2002 Act.

2. *Proceedings of Tribunal*

2.1 The President has under paragraph 7 of Schedule 4 made directions relating to the proceedings of the Tribunal to the following effect.

2.2 Subject to paragraph 2.3, the jurisdiction of the Tribunal in dealing with the matters specified in the first column below shall be exercised by the number and type of members specified in the second column.

(1)	Decisions as to whether notice of appeal given in time/whether to extend time for appealing (including imminent removal)/ rejection of invalid notice of appeal	A legally qualified member
(2)	All appeals in which no specific direction is given or which are not specified below	A legally qualified member or two or more members, at least one of whom is legally qualified
(3)	Reconsiderations of appeals where no specific direction is given (including decisions on orders for funding)	A legally qualified member or two or more members, at least one of whom is legally qualified
(4)	Appeals which have to be reheard if two members disagree	Three or more members (but so that there is an odd number of members sitting) at least one of whom is legally qualified
(5)	Case management review hearings and other interlocutory hearings, the giving of any directions concerning appeals or applications (whether or not at such hearings) and adjournments (except where a specific direction for the appeal to be heard by a group of members provides otherwise)	A legally qualified member
(6)	Appeals which are to be determined without a hearing	A legally qualified member
(7)	Applications for bail	A legally qualified member
(8)	The issue of a witness summons	A legally qualified member
(9)	Applications for review	An immigration judge

		authorised by the President to deal with such applications
(10)	Any determination that an appeal be dismissed as abandoned or finally determined	A legally qualified member
(11)	Reviews of decisions not to make funding order	A senior immigration judge who was not involved in the decision being reviewed

2.3 Any of the matters specified in paragraph 2.2(5), (6), (7), (8) or (10) above may be dealt with by a Tribunal hearing an appeal as specified in paragraph 2.2(2) to (4) above.

3. *Rejection of invalid notice of appeal*

3.1 Rule 9 (rejection of invalid notice of appeal) imposes a duty on the Tribunal not to accept an invalid notice of appeal and to serve notice to this effect on both the person who gave the notice of appeal and the respondent.

3.2 The Tribunal will scrutinise a notice of appeal as soon as practicable after it has been given. 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, rule 9 provides that the Tribunal shall take no further action in relation to the notice of appeal.

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. The Tribunal will therefore act 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 an exercisable right of appeal.

3.5 Rule 9 does not apply in the case of a fast track appeal and any issue as to the validity of any such appeal will be dealt with at the hearing.

4. *Late notice of appeal*

4.1 An important consequence of appeals being made directly to the Tribunal, rather than being given to the Home Office or Entry Clearance Officer (as was the position with the former Immigration Appellate Authority), is that the Tribunal will have to consider in every case whether a notice of appeal was given in time.

4.2 Attention is drawn to rule 10 (late notice of appeal), which requires a notice of appeal given outside the applicable time limit to include an application for an extension of time for appealing. That application must give reasons for lateness

and be accompanied by any written evidence relied upon in support of those reasons.

4.3 Where no such application is made but it appears to the Tribunal, upon receipt of the notice of appeal, that that notice is out of time, the Tribunal must notify the person giving the notice that it is proposed to treat the notice as out of time. That person then has three days (or ten days if outside the United Kingdom) in which to file evidence to show the notice was given in time or that there are special circumstances for failing to do so, which could not reasonably have been stated in the notice of appeal.

4.4 The obligation on the Tribunal to give such notification does not arise if the Tribunal extends time for appealing of its own initiative (rule 10(2)). Parties must **not** assume that the existence of this power means that the limits specified in rule 7 (time limit for appeal) can in practice be ignored. The power is intended to be used where, for instance, a disruption of the postal service delays notices that would otherwise have been received in time.

4.5 Except as described in paragraph 4.4, the Tribunal may extend time for appealing if satisfied that by reason of special circumstances it would be unjust not to do so (rule 10(5)). That issue must be decided without a hearing. The Tribunal's decision cannot be the subject of an application for reconsideration under section 103A; nor can it be appealed.

4.6 The preceding provisions of this paragraph do not apply in the case of a fast track appeal. Instead, any issue of timeliness will be decided as a preliminary issue at the hearing (rule 12 of the Fast Track Rules).

5. *Imminent removal*

5.1 Rule 11 (special provisions for imminent removal cases) requires the Tribunal, if reasonably practicable and except in the case of a fast track appeal, to make a preliminary decision under rule 10 (late notice of appeal) before the date and time of a person's proposed removal from the United Kingdom where:

(a) that person has given notice of appeal; and
(b) removal directions have been issued to take effect within five calendar days of the date on which such notice of appeal was given.

5.2 In such a case, the Tribunal may decide that notification under rule 10(2) may be given orally (including by telephone), that the three day period for giving evidence under rule 10(4) should be shortened and that any such evidence should be given orally, including by telephone. The Tribunal's decision under rule 10 must still, however, be served in writing.

5.3 Imminent removal cases under rule 11 will normally be dealt with by senior immigration judges on a "rota" basis. It will be for the senior immigration judge concerned to decide whether to exercise all or any of the powers conferred by rule 11(3), having regard to the circumstances of the particular case. These may include whether the person concerned is able to give evidence by telephone, in particular where that person's language is not English, and, where that person is

represented, the practicability of receiving submissions from the representative. The judge may decide to hold a hearing or a telephone hearing for the purpose of receiving evidence.

6. *Case management review hearings and directions*

6.1 Except where the Tribunal directs otherwise, a CMR hearing shall be held in respect of every asylum appeal (other than a fast track appeal and an appeal in respect of which the determination of the Tribunal is ordered to be reconsidered), where the appellant:

(a) is present in the United Kingdom; and
(b) has a right of appeal whilst in the United Kingdom.

6.2 It is important that the parties and their representatives understand that a CMR hearing or similar first hearing is a **hearing** in the appeal and that the appeal may be determined by the Tribunal under rule 15(2) (determination of an appeal without a hearing) or rule 19 (hearing of appeal in the absence of a party) if a party does not appear and is not represented at that hearing.

6.3 In addition to any information required by rule 8 (form and contents of notice of appeal), the appellant must provide the Tribunal and the respondent at the CMR hearing with:

(a) particulars of any application for permission to vary the grounds of appeal (see rule 14 (variation of grounds of appeal));
(b) particulars of any amendments to the reasons in support of the grounds of appeal;
(c) particulars of any witnesses to be called or whose written statement or report is proposed to be relied upon at the full hearing; and
(d) a draft of any directions that the appellant is requesting the Tribunal to make at the CMR hearing.

6.4 In addition to any documents required by rule 13 (filing of documents by the respondent), the respondent must provide the Tribunal and the appellant at the CMR hearing with:

(a) any amendment that has been made or that is proposed to be made to the notice of decision to which the appeal relates or to any other document served on the appellant giving reasons for that decision; and
(b) a draft of any directions that the respondent is requesting the Tribunal to make at the CMR hearing.

6.5 In most cases, including those appeals where a CMR hearing is to be held, the Tribunal will normally have given to the parties the following directions with the notice of hearing:

(a) not later than 5 working days before the full hearing the appellant shall serve on the Tribunal and the respondent:

(i) witness statements of the evidence to be called at the hearing, such statements to stand as evidence in chief at the hearing;
(ii) a paginated and indexed bundle of all the documents to be relied upon at the hearing with a schedule identifying the essential passages;
(iii) a skeleton argument, identifying all relevant issues including human rights claims and citing all the authorities relied upon; and
(iv) a chronology of events;

(b) not later than 5 working days before the full hearing the respondent shall serve on the Tribunal and the appellant a paginated and indexed bundle of all the documents to be relied on at the hearing, with a schedule identifying the relevant passages, and a list of any authorities relied upon.

6.6 At the end of the CMR hearing, the Tribunal will give to the parties any further written directions relating to the conduct of the appeal.

6.7 Although in normal circumstances a witness statement should stand as evidence in chief, there may be cases where it will be appropriate for appellants or witnesses to have the opportunity of adding to or supplementing their witness statements. Parties are referred to the judgment of the Court of Appeal in R v Secretary of State for the Home Department *ex parte* Singh [1998] INLR 608.

6.8 If at the CMR hearing the Tribunal considers that the circumstances are such that the jurisdiction of the Tribunal at the full hearing should be exercised by a group of members the Tribunal may give a direction to that effect at the CMR hearing.

6.9 In addition to the directions referred to above, at the end of the CMR hearing the Tribunal shall also give to the parties written confirmation of:

(a) any issues that have been agreed at the CMR hearing as being relevant to the determination of the appeal; and
(b) any concessions made at the CMR hearing by a party.

6.10 In paragraph 6.1, "asylum appeal" means an appeal that relates, in whole or part, to an asylum claim.

7. *Standard directions in fast track appeals*

7.1 In the case of a fast track appeal, the appellant and the respondent shall respectively serve the materials specified in direction 6.5(a) and (b) either at the hearing or, if practicable, on the business day immediately preceding the date of the hearing.

7.2 Subject to the point made in paragraph 6.7, witness statements served in pursuance of paragraph 7.1 shall stand as evidence in chief at the hearing.

8 Trial bundles

8.1 The parties shall have regard to paragraph 8.2 to 8.6 in the preparation of trial bundles for hearings before the Tribunal.

8.2 The best practice for the preparation of bundles is as follows:

(a) all documents must be relevant, be presented in logical order and be legible;
(b) where the document is not in the English language, a typed translation of the document signed by the translator in accordance with rule 52 (language of documents) to certify that the translation is accurate, must be inserted in the bundle next to the copy of the original document, together with details of the identity and qualifications of the translator;
(c) if it is necessary to include a lengthy document, that part of the document on which reliance is placed should, unless the passages are outlined in any skeleton argument, be highlighted or clearly identified by reference to page and/or paragraph number;
(d) bundles submitted must have an index showing the page numbers of each document in the bundle;
(e) the skeleton argument or written submission should define and confine the areas at issue in a numbered list of brief points and each point should refer to any documentation in the bundle on which the appellant proposes to rely (together with its page number);
(f) where reliance is placed on a particular case or text, photocopies of the case or text must be provided in full for the Tribunal and the other party; and
(g) large bundles should be contained in a ring binder or lever arch file, capable of lying flat when opened.

8.3 The Tribunal recognises the constraints on those representing the parties in appeals in relation to the preparation of trial bundles and this direction does not therefore make it mandatory in every case that bundles in exactly the form prescribed must be prepared. Where the issues are particularly complex it is of the highest importance that comprehensive bundles are prepared. If parties to appeals fail in individual cases to present documentation in a way which complies with the direction, it will be for the Tribunal to deal with any such issue.

8.4 Much evidence in asylum and immigration appeals is in documentary form. Representatives preparing bundles need to be aware of the position of the Tribunal, which may be coming to the case for the first time. The better a bundle has been prepared, the greater it will assist the Tribunal. Bundles should contain all the documents that the Tribunal will require to enable it to reach a decision without the need to refer to any other file or document. The Tribunal will not be assisted by repetitious, outdated or irrelevant material.

8.5 It may not be practical in many appeals to require there to be an agreed trial bundle but it nevertheless remains vital that the parties inform each other at an early stage of all and any documentation upon which they intend to rely.

8.6 The parties cannot rely on the Tribunal having judicial notice of any country information or background reports in relation to the case in question. If either party wishes to rely on such country or background information, copies of the relevant documentation must be produced.

9 Adjournments

9.1 Applications for the adjournment of appeals (other than fast track appeals) listed for hearing before the Tribunal must be made not later than 4.00 pm one clear working day before the date of the hearing.

9.2 For the avoidance of doubt, where a case is listed for hearing on, for example, a Friday, the application must be received by 4.00 pm on the Wednesday.

9.3 The application for an adjournment must be supported by full reasons and must be made in accordance with rule 21 (adjournment of appeals).

9.4 Any application made later than the end of the period mentioned in paragraph 9.1 must be made to the Tribunal at the hearing and will require the attendance of the party or the representative of the party seeking the adjournment.

9.5 It will be only in the most exceptional circumstances that late applications for adjournments will be considered without the attendance of a party or representative.

9.6 Parties must not assume that an application, even if made in accordance with paragraph 9.1, will be successful and they must always check with the Tribunal as to the outcome of the application. This is particularly important, given the restrictions imposed by rule 21 on the Tribunal's power to adjourn appeal hearings.

9.7 Any application for the adjournment of a fast track appeal must be made to the Tribunal at the hearing and will be considered by the Tribunal under rule 28 (adjournment) of the Fast Track Rules (see also rule 30(2)(a) of those Rules).

9.8 If an adjournment is not granted and a party fails to attend the hearing, the Tribunal is required by rule 19 (hearing appeal in absence of a party) to proceed with the hearing, if satisfied that valid notice of the hearing has been given and that there has been no satisfactory explanation for absence.

10 Determinations where jurisdiction of Tribunal exercised by more than one member

10.1 Where, in respect of any appeal, the jurisdiction of the Tribunal is exercised by more than one member, the determination is that reached by the majority of those members.

10.2 It is accordingly inappropriate that a dissenting view should be expressed or that the determination should indicate that it is that of a majority.

10.3 Such a determination will therefore not disclose whether it is unanimous or by a majority nor will any minority or dissenting views be included in it or otherwise communicated.

11 Record of Proceedings

11.1 The Tribunal shall keep a proper record of proceedings of any hearing.

11.2 That record should be signed and dated by the member of the Tribunal responsible for taking the record and be attached to the Tribunal's case file.

12 Transfer of proceedings

12.1 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) a senior immigration judge or designated immigration judge decides that it is not practicable for the original Tribunal to complete the hearing or to give its determination justly or without undue delay,

the senior immigration judge or designated immigration judge may direct the appeal to be heard by a differently constituted Tribunal ("the new Tribunal").

12.2 Where an appeal is transferred under paragraph 12.1:

(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 shall have power to deal with the appeal as if it had been commenced before it.

12.3 The Tribunal may transfer proceedings regarding the reconsideration of an appeal in the circumstances described in paragraph 14.2 and 14.9.

12.4 Where proceedings are transferred under paragraph 12.3, any documents sent to or given by the Tribunal which transferred the proceedings shall be deemed to have been sent to or given by the Tribunal to which those proceedings are transferred.

13 Review

13.1 It is an important feature of the single-tier Tribunal that a party dissatisfied by a determination may, in certain circumstances, apply for that determination to be reconsidered by the Tribunal.

13.2 The relevant statutory provisions concerning reconsideration of appeals are to be found in:

(a) section 103A (as inserted by section 26(6) of the 2004 Act);
(b) paragraph 30 of Schedule 2 to the 2004 Act ("the filter provision");
(c) rules 24 to 33;

(d) rules 16 to 23 of the Fast Track Rules (in the case of fast track appeals); and
(e) rules 54.28 to 54.35 of the Civil Procedure Rules 1998 ("CPR") (as inserted by rule 7 of the Civil Procedure (Amendment) Rules 2005).

13.3 For an unspecified period beginning with 4 April 2005, an application for an order requiring the Tribunal to review its decision on an appeal will be considered initially by the Tribunal itself under the filter provision, with a right to apply to the High Court where the immigration judge decides not to order reconsideration.

13.4 A reconsideration order may not be made in respect of a determination of the Tribunal:

(a) where such an order has previously been made in relation to the appeal (section 103A(2)(b)); or
(b) where the jurisdiction of the Tribunal was exercised by three or more legally qualified members (section 103A(8)).

13.5 In those cases, sections 103B and 103E provide for an appeal to the Court of Appeal/Court of Session/ Court of Appeal in Northern Ireland.

13.6 The time limits for applying for an order for reconsideration are contained in section 103A(3) or, in the case of fast track appeals, in rule 3 of the Fast Track Time Limits Order. The requirements for filing the application are contained in CPR 54.29. An application outside the relevant time limit may be entertained if the immigration judge thinks that the application could not reasonably practicably have been made within that period (section 103A(4)(b)).

13.7 The immigration judge may make an order for reconsideration only if that judge thinks that the original Tribunal may have made an error of law **and** that there is a real possibility that the Tribunal would decide the appeal differently on reconsideration (rule 26(6)).

13.8 The effect of rule 26(6) is that, as with applications for permission to appeal to the IAT under section 101 (now repealed), a party seeking to adduce evidence that was not before the original Tribunal must explain in the application the significance of that evidence with regard to **both** of the requirements specified in paragraph 13.7 (*see* E&R [2004] EWCA Civ 49; CA [2004] EWCA Civ 1165).

13.9 The immigration judge who has decided to make an order for reconsideration:

(a) must state the grounds on which the Tribunal is ordered to reconsider its decision (rule 27(2)(a)); and
(b) will (amongst other things) decide under rule 27(2)(b) whether to direct that a CMR hearing be held before the reconsideration hearing takes place and whether to make a direction as to the evidence to be adduced at the hearing initially fixed for the reconsideration (as to which, see paragraph 14).

13.10 The references in paragraph 13.7 and 13.8 to the original Tribunal include references to an adjudicator in any case where, by virtue of article 6 of the

Commencement Order, the order under section 103A is made in respect of the decision of an adjudicator.

14 Procedure on reconsideration

14.1 Subject to paragraph 14.12, where an appeal has been ordered under section 103A to be reconsidered, then, unless and to the extent that they are directed otherwise, the parties to the appeal should assume that the issues to be considered at the hearing fixed for the reconsideration will be whether the original Tribunal made a material error of law (see rule 31(2)) and, if so, whether, on the basis of the original Tribunal's findings of fact, the appeal should be allowed or dismissed.

14.2 Where the Tribunal decides that the original Tribunal made a material error of law but that the Tribunal cannot proceed under rule 31(3) to substitute a fresh decision to allow or dismiss the appeal because findings of fact are needed which the Tribunal is not in a position to make, the Tribunal will make arrangements for the adjournment of the hearing or for the transfer of the proceedings under paragraph 12.3 so as to enable evidence to be adduced for that purpose.

14.3 Where the Tribunal acting under paragraph 14.2 adjourns the hearing, its determination, produced after the adjourned hearing has taken place, will contain the Tribunal's reasons for finding that the original Tribunal made a material error of law.

14.4 Where the Tribunal acting under paragraph 14.2 transfers the proceedings, it shall prepare written reasons for its finding that the original Tribunal made a material error of law and those written reasons shall be attached to, and form part of, the determination of the Tribunal which substitutes a fresh decision to allow or dismiss the appeal.

14.5 The references in paragraph 14.1 to 14.4 to the original Tribunal include references to an adjudicator in any case where, by virtue of article 6 of the Commencement Order, the order under section 103A is made in respect of the decision of an adjudicator.

14.6 Under article 5 of the Commencement Order, any appeal that was pending before the IAT immediately before 4 April 2005 shall on and after that date be dealt with in the same manner as if the Tribunal had originally decided the appeal and was reconsidering its decision.

14.7 Rule 62(7) provides that, in the case of an appeal described in paragraph 14.6, the reconsideration shall be limited to the grounds upon which the IAT granted permission to appeal. In most cases, those grounds will require the Tribunal to decide whether the adjudicator made a material error of law.

14.8 Subject to paragraph 14.12, on and after 4 April 2005, and in the absence of any direction to the contrary, the parties to any appeal that falls to be dealt with as described in paragraph 14.6 should assume that the issues to be considered at the hearing will be whether the adjudicator made a material error of law and, if so, whether, on the basis of that adjudicator's findings of fact, the appeal should be allowed or dismissed.

14.9 Where the Tribunal decides that the adjudicator made a material error of law but that the Tribunal cannot proceed under rule 31(3) to substitute a fresh decision to allow or dismiss the appeal because findings of fact are needed which the Tribunal is not in a position to make, the Tribunal will make arrangements for the adjournment of the hearing or for the transfer of the proceedings under paragraph 12.3 so as to enable evidence to be adduced for that purpose.

14.10 The provisions of paragraph 14.3 and 14.4 shall apply in relation to paragraph 14.9 as they apply in relation to paragraph 14.2 but with the modification that the references to the original Tribunal shall be interpreted as referring to the adjudicator.

14.11 Where, immediately before 4 April 2005, an appeal was pending before an adjudicator, having been remitted to an adjudicator by a court or the IAT, it will already have been decided that the original adjudicator's determination cannot stand. The Tribunal will accordingly proceed to re-hear the appeal.

14.12 In the case of a reconsideration of a fast track appeal, the Tribunal reconsidering the appeal is required by rule 23 of the Fast Track Rules to reconsider its decision on the appeal at the reconsideration hearing, subject to the qualifications described in rule 23(1) of those Rules. The Tribunal's power to adjourn a fast track appeal that remains as such is governed by rule 28 of those Rules.

14.13 The parties to any fast track appeal which is being reconsidered by the Tribunal on or after 4 April 2005 will be expected to attend with all necessary witnesses and evidence that may be required if the Tribunal should decide that it is necessary to re-hear the appeal. It will be unusual for the Tribunal to adjourn the reconsideration hearing but, if it does so, paragraph 14.4 will, so far as appropriate, apply.

14.14 The preceding provisions of this paragraph and paragraph 13 are subject to article 9 of the Commencement Order in the case of certain "old" appeals, where the issue is not restricted to whether the adjudicator made an error of law.

15 Legal aid on reconsideration

15.1 The relevant statutory provisions concerning the provision of legal aid in respect of the reconsideration of appeals (other than fast track appeals) decided in England and Wales are to be found in:

(a) section 103D (as inserted by section 26(6) of the 2004 Act);
(b) rule 28A (orders for funding of section 103A applications) (as inserted by the Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2005) and rule 33 (orders for funding on reconsideration);
(c) the Community Legal Service (Asylum and Immigration Appeals) Regulations 2005 ("the CLS Regulations").

15.2 On an application under section 103A which is dealt with by an immigration judge under the filter provision referred to in paragraph 13.3, the immigration judge has power to make an order under section 103D for the appellant's costs to be paid

out of the CLS fund ("a funding order"). That power is, however, exercisable only in the following circumstances:

(a) where the immigration judge dismisses or makes no order on the section 103A application, that judge may make a funding order only where there has been a change in relevant circumstances or a change in the law since the application was made **and** at the time the application was made, there was a significant prospect that the appeal would be allowed upon reconsideration (regulation 5(4));
(b) where the immigration judge makes an order for reconsideration but, in the event, no reconsideration takes place (eg. because the immigration decision appealed against is withdrawn) (regulation 5(5)).

15.3 A funding order of the kind described in paragraph 15.2(b) can be made only on application by a supplier (as defined in the CLS Regulations) or counsel instructed by the supplier (regulation 5(5)).

15.4 Rule 33 (orders for funding on reconsideration) requires the Tribunal that has reconsidered an appeal to make a funding determination, where the appellant's representative has specified in the application for reconsideration that he is seeking a funding order. The funding determination is separate from the determination of the appeal itself.

15.5 Unless it directs otherwise, the Tribunal shall hear any submissions as to such an order at the conclusion of the proceedings on the reconsideration.

15.6 If the Tribunal allows the appeal on reconsideration, it is required by regulation 6(2) to make a funding order. If it does not allow the appeal, the Tribunal must not make a funding order unless it is satisfied that, **at the time when the appellant made the section 103A application**, there was a **significant prospect** that the appeal would be allowed upon reconsideration (regulation 6(3)).

15.7 The Tribunal must give reasons where it decides not to make a funding order, following a reconsideration of an appeal (regulation 6(4)). A supplier, or counsel instructed by a supplier, may apply under regulation 7 for a review of such a decision. The review will be carried out by a senior immigration judge, who will decide whether to hold a hearing, if one is requested.

15.8 It should be noted that the power to make a funding order in the circumstances described in paragraph 15.2(b) covers only the costs in respect of the review application; not any costs incurred in connection with preparing for a reconsideration that does not, in the event, take place. In certain circumstances, it may be inappropriate for a supplier or counsel to be denied a funding order which would cover the costs of preparing for the reconsideration. In an appropriate case, therefore, the Tribunal will consider representations as to whether it should make a decision by consent on the appeal following reconsideration (whether or not involving a hearing), so as to enable the Tribunal to make a funding order under section 103D(3) in respect of the review

application and the reconsideration, notwithstanding that it may not otherwise have been necessary to undertake the reconsideration.

15.9 A funding order can only be made where there has been an application for an order under section 103A(1) (see section 103D(2)(b)). Accordingly, a funding order may not be made in a case described in paragraph 14.6 or paragraph 14.11. Nor can such an order be made in a case described in paragraph 14.1 where a pending application to the IAT is treated as an application under section 103A(1) (see paragraph 14.5 and article 6(5) of the Commencement Order).

16 Format of determinations

16.1 In order to ensure consistency in the formatting of determinations, the member of the Tribunal who is preparing the determination shall:

(a) use the front sheet format set out in Annex A as appropriate for the case;
(b) number sequentially each paragraph of the determination;
(c) conclude each determination under a heading "Decision" in the manner set out in Annex B, adapting the wording as necessary; and
(d) sign and date the determination at the end of the document or employ such electronic methods as the President may approve for signifying that the determination is finalised.

17. *Citation of determinations*

17.1 A determination of the Tribunal to which this sub-paragraph applies will be either "reported" or "unreported". The decision whether to report a case is that of the Tribunal and is not perceived to be an issue in which the parties to the appeal have an interest.

17.2 Paragraph 17.1 applies to any determination that is promulgated following a hearing at which the jurisdiction of the Tribunal was exercised by a senior immigration judge (whether sitting alone or with another member or members)

17.3 No determination will be reportable which follows a hearing before a single member of the Tribunal other than the President or a Deputy President of the Tribunal.

17.4 Reported determinations will receive a neutral citation number of the form [2005] UKAIT 0000 and will be widely available (including being available on the Tribunal's website). They will be anonymised and will be cited by the neutral citation number. Determinations without such a number are unreported. Anonymised versions of unreported determinations will be deposited in the Supreme Court Library and treated as unreported determinations for the purposes of the Tribunal's website.

17.5 Other determinations will receive no neutral citation number. They will be sent to the parties (in accordance with the Rules) but will not be published.

17.6 A determination of the Tribunal which has not been reported may not be cited in proceedings before the Tribunal unless either:

(a) the appellant in the present proceedings, or a member of his family, was a party to the proceedings in which the previous determination was issued; or
(b) the Tribunal gives permission.

17.7 Permission under paragraph 17.6 will be given only in exceptional cases, and even more rarely in the case of determinations promulgated following a hearing before a single member of the Tribunal.

17.8 An application for permission to cite a determination which has not been reported must:

(a) include a **full** transcript of the determination;
(b) identify the proposition for which the determination is to be cited;
(c) certify that the proposition is not found in any reported determination of the Tribunal or of the IAT and has not been superseded by a decision of a higher authority; and
(d) be accompanied by a summary analysis of all other decisions of the Tribunal and all available decisions of higher authority, relating to the same issue, promulgated in the period beginning six months before the date of the decision proposed to be cited and ending two weeks before the date of the hearing. (This analysis is intended to show the trend of Tribunal decisions on the issue.)

17.9 The provisions of paragraph 17.6 to 17.8 apply to unreported determinations of the IAT and to determinations of Adjudicators as those provisions apply to unreported determinations of the Tribunal and to determinations promulgated following a hearing by a single member of the Tribunal.

17.10 Until 4 October 2005, the references in paragraph 17.8(d) to decisions of the Tribunal shall be construed as including references to decisions of the IAT.

17.11 A party citing a determination of the IAT bearing a neutral citation number prior to [2003] (including all series of 'bracket numbers') must be in a position to certify that the matter or proposition for which the determination is cited has not been the subject of more recent, reported, determinations of the IAT or of the Tribunal.

18. Starred and Country Guidance determinations

18.1 Reported determinations of the Tribunal and of the IAT which are "starred" shall be treated by the Tribunal as authoritative in respect of the matter to which the "starring" relates, unless inconsistent with other authority that is binding on the Tribunal.

18.2 A reported determination of the Tribunal or of the IAT bearing the letters "CG" shall be treated as an authoritative finding on the country guidance issue identified in the determination, based upon the evidence before the members of

the Tribunal or the IAT that determined the appeal. As a result, unless it has been expressly superseded or replaced by any later "CG" determination, or is inconsistent with other authority that is binding on the Tribunal, such a country guidance case is authoritative in any subsequent appeal, so far as that appeal:

(a) relates to the country guidance issue in question; and
(b) depends upon the same or similar evidence.

18.3 A list of current CG cases will be maintained on the Tribunal website. Both the respondent and any representative of the appellant in an appeal concerning a particular country will be expected to be conversant with the current "CG" determinations relating to that country.

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

19. Bail applications

19.1 An application for bail shall if practicable be listed for hearing within three working days of receipt by the Tribunal of the notice of application.

19.2 Any such notice which is received by the Tribunal after 3.30pm on a particular day shall be treated for the purposes of this paragraph as if it were received on the next business day.

20. Discrimination

20.1 Section 84(1)(b) makes it a ground of appeal against an immigration decision that that decision is unlawful by virtue of section 19B of the Race Relations Act 1976 (discrimination by public authorities).

20.2 In cases where there is a finding of discrimination, the person affected can bring a claim in the County Court. On that claim, both the claimant and the court are bound by the decision in the immigration appeal (section 57A of the Race Relations Act 1976).

20.3 Accordingly, in a case where discrimination is raised as a ground of appeal, it is particularly important that the Tribunal is aware of its duty under section 86(2)(a) to determine any matter raised as a ground of appeal and that it makes a finding on that ground, even if the alleged discrimination is not relevant to the ultimate outcome of the appeal (see *Bibi* [2005] EWHC 386 (Admin)).

21 *Council on Tribunals*

21.1 Under rule 54(5), members of the Council on Tribunals (and its Scottish equivalent) are entitled to attend hearings of cases before the Tribunal.

21.2 Although that rule does not specifically envisage that such a member should have access to discussions between members of the Tribunal before and after the

hearing (where the jurisdiction of the Tribunal is being exercised by more than one of its members), a member of the Council visiting in an official capacity should be invited to observe the whole of the Tribunal's work if that member wishes to do so.

21.3 In order to avoid any misunderstanding, the parties (including their representatives) present at a hearing should be informed that the member of the Council will retire with the Tribunal and will observe (but not take part in or communicate) the Tribunal's deliberations.

MR JUSTICE HODGE
PRESIDENT
4 April 2005

ANNEX A

Front sheet of determination

Asylum and Immigration Tribunal Appeal number:

THE IMMIGRATION ACTS

Heard at Determination Promulgated
On

Before

[XXXX NAME[S] XXXX]
[TITLE[S]]

Between

[Appellant's names – as in AIT file]

Appellant

and

[THE SECRETARY OF STATE FOR THE HOME DEPARTMENT]
[or]
[ENTRY CLEARANCE OFFICER, (City)]
[or]
[IMMIGRATION OFFICER]

Respondent

Representation:

For the Appellant:
For the Respondent:

DETERMINATION AND REASONS

ANNEX B

Concluding words of determination

1. In asylum/human rights appeals

DECISION

The appeal is allowed/dismissed on asylum grounds
The appeal is allowed/dismissed on human rights grounds

Signed/ Official crest Dated
Immigration Judge/Designated Immigration Judge/Senior Immigration Judge

2. In immigration/human rights appeals

DECISION

The appeal in respect of the Immigration Rules is allowed/dismissed
The appeal is allowed/dismissed on human rights grounds

Signed/Official Crest Dated
Immigration Judge/Designated Immigration Judge/Senior Immigration Judge

3. On reconsideration of an appeal

DECISION

The original Tribunal did not make a material error of law and the original determination of the appeal shall stand

The original Tribunal made a material error of law.
The following decision is accordingly substituted:
[see 1 and 2 above]

Signed/Official Crest Dated
Immigration Judge/Designated Immigration Judge/Senior Immigration Judge

[insert wording from section 1, 2 or 3 above as appropriate and subject to any necessary amendment]

ANNEX C

Guidance Notes

Guidance Note No 1 (November 2001) – Guidance on sitting for part-time adjudicators

Guidance Note No 2 (May 2002) – Guidance on transfer of proceedings

Guidance Note No 3 (May 2002) – Pre-hearing introduction

Guidance Note No 4 (February 2003) – Delayed promulgations

Guidance Note No 5 (April 2003) – Unrepresented appellants

Bail guidance notes for Adjudicators (May 2003) (Third edition)

Guidance Note No 6 (June 2003) – Guidance for adjudicators on deposit of recognizances

Guidance Note No 7 (July 2003) – Guidance for adjudicators on withdrawals

Guidance Note No 8 (April 2004) – Unaccompanied children

Guidance note (August 2004) – Unrepresented appellants who do not understand English