

# Asylum Appeal Hearings Overview

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## Introduction

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This section sets out an overview for Case Owners on the various asylum appeals processes that may take place as a consequence of the asylum claim being refused.

### **Application of this instruction in respect of children and those with children**

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

## Appeal Hearing Types, Structure and Timescales

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The three main types of appeal hearings are:

- Case management Review (CMR) Hearing
- Substantive Appeal Hearing
- Reconsideration Hearing

A case can also be the subject of an application for a Judicial Review which is not a statutory appeal right.

Where the asylum claim has been refused and the consequent immigration decision attracts a right of appeal, the appellant may lodge an appeal with the Asylum Immigration Tribunal (AIT). Where the AIT accepts the appeal, a CMR hearing will take place. For more details on CMR hearing see Asylum Instruction on Case Management Reviews.

Once the CMR hearing has taken place, the majority of cases will proceed to the substantive hearing. For more details on CMR hearing see Asylum Instruction on Substantive Appeal Hearings

The outcome of the substantive hearing will determine whether a reconsideration hearing takes place. A reconsideration hearing may be requested by the appellant where appeal has been dismissed. Equally, the Home Office may request a reconsideration hearing, where the appeal has been allowed. For more details on reconsideration hearings see Asylum Instruction on Onward Rights of Appeal

An application for a Judicial Review (JR) is **normally** made by the appellant once all avenues of appeal have been exhausted. However, Case Owners should be aware that an appellant may apply for a judicial review at any time where they wish to challenge any decision made by a public authority.

### Timescales for an in-country (suspensive) right of appeal

<b>Day 0</b>	Decision served to appellant by Case Owner
<b>Day 1 – 9</b>	Appellant gains legal advice and appeal is prepared
<b>Day 10</b>	Last day on which the appeal may be lodged to the AIT
<b>Day 10 -11</b>	Case Owner notified of receipt of appeal by the AIT
<b>Day 12 -14</b>	Case Owner to review case before CMR hearing
<b>Day 11 -18</b>	Team support prepares appeal bundle and send to AIT and applicant/rep.
<b>Day 20</b>	CMR hearing
<b>Day 30</b>	Oral substantive hearing
<b>Day 40</b>	Determination promulgated

### **Timescales for an out of country (non-suspensive) right of appeal**

<b>Up to Day 10</b>	Decision served to appellant by Case Owner
<b>Day 0</b>	Appellant is removed from the UK
<b>Day 0 -27</b>	Appellant gains legal advice and appeal is prepared
<b>Day 28</b>	Last day on which the appeal may be lodged to the AIT
<b>Day 28 – 29</b>	Appeal registered and listed for CMR and substantive hearing and initial directions issued by AIT to all parties
<b>Day 28 -29</b>	Case Owner notified of appeal lodged
<b>Day 40 – 47</b>	Case Owner to review and prepare case before CMR
<b>Day 41 – 46</b>	Team support to prepare appeal bundle and send at AIT and applicant/rep.

## The Role and Responsibility of the AIT

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The Asylum and Immigration Tribunal was created by the Asylum and Immigration (Treatment of Claimants) Act 2004 and started operation on the 4<sup>th</sup> April 2005. The AIT is an independent Appeals Tribunal (part of the Department of Constitutional Affairs) that hears and determines appeals against decisions made by the Home Office in matters of asylum, immigration and nationality. The AIT replaces the Immigration Appellate Authority which consisted of two tiers; adjudicators and the Immigration Appeal Tribunal. The AIT therefore considers all immigration appeals and consists of a single tier. For this reason, it is sometimes known as the Unified Appeal System (UAS) or just “single tier.”

Appeals against an immigration decision must be served directly to the AIT (except in out of country immigration appeals where it is possible for appellants to serve the appeal in the Entry Clearance Office Post as well as the AIT or if an appellant is detained in which he may serve his notice of appeal on the person who has custody of him (under procedural Rule 6(3)b). It is the responsibility of the AIT to notify all parties of an appeal as to when and where the appeal will take place as well as determining the appeal and where it thinks appropriate to issue directions to give effect to the determination.

Appeals must be lodged directly to the AIT at the following address:

Asylum and Immigration Tribunal  
PO Box 7866  
Loughborough  
LE1 3XZ

### The Role of Judges and Panels within the AIT

The President of the AIT is always a High Court Judge, who is responsible for the overall running and administration of the AIT. There are also two Deputy Presidents.

The President and the Deputy Presidents generally sit on the more complicated cases and they hold the authority to report any decisions they make on any case (even if they did not sit on that case). A reported case may go into the public domain and becomes a precedent for future cases. It is therefore important to ensure that a SCW should present any cases in which the President or either of the Deputy Presidents is sitting.

Apart from the President and Deputy Presidents, there are three different types of judges:

**Senior Immigration Judge** – The Senior Immigration Judges (SIJs) may sit on a Tribunal Panel or sit alone on a hearing. When a SIJ sits on a hearing as part of a Tribunal Panel, then they have the authority to report that specific case.

A SIJ does not have the authority to report a case if sitting alone and a Tribunal Panel may only report a case if a SIJ is a member of the panel.

A SIJ also considers applications for reconsideration of Tribunal decisions and will order reconsideration if they think it arguable that the IJ or panel that made the initial decision made a material error of law.

**Designated Immigration Judges (DIJs)** are not SIJs but act as “mentors” for the Immigration Judges at their hearing centre. The local DIJ will also sit on a hearing as an IJ, either alone or as

part of a panel with other IJs. However, these panels will not be able to report cases unless a SIJ is sitting on them.

**Immigration Judge (IJs)** normally sit alone and come to a decision after hearing all the evidence at an oral hearing. While IJs can and often do sit on panels, only a panel, at least one of whose members is a SIJ can report a case.

### **Panel Hearings**

Although most appeals are heard by a single judge, the AIT also has powers to sit as a panel. A panel must consist of at least one legally qualified member (an immigration judge or higher) and mixture of legal and lay members or of legal members of various levels of seniority.

Where a SIJ (or the president or a Deputy President) is a member of a panel (legal panel) then that panel has the power to report a case. These are often called “legal panels”, the term is misleading, as all panels must only contain at least one legally qualified member..

Where a case is being reconsidered (to consider whether or not the IJ that made the initial decision in the case made a material error of law), the tribunal would usually sit as a panel.

Finally, if the AIT, when considering a case for the first time, sits as a panel consisting of at least three **legally qualified members** (not necessarily SIJs), then its decision will not be subject to reconsideration, but can only be appealed to the Court of Appeal under **s103E of the NIA Act 2002**.

### **Grade of PO to present before a panel**

If a Senior Immigration Judge is sitting on the panel, a Senior Presenting Officer should generally present the case (unless we are using Counsel). If the Panel is chaired by a Designated Immigration Judge, then a Case Owner is able to present the appeal.

# Document Control

## Change Record

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2.0	RA	29/10/09	Included reference to S55 BCIA 2009 (Children's Duty)

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## Review

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## Issue Control

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