

ASYLUM SUPPORT APPEALS PROCESS

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Introduction

This Policy Bulletin reflects that there is now one set of procedures rules which govern all the tribunals in the social entitlement chamber of the 1st tier, including the asylum support tribunal. The new rules are the Tribunal Procedure (1st Tier Tribunal) (Social Entitlement Chamber) Rules 2008 (SI 2008/2685) which came into force on 3 November 2008.

The Asylum Support Appeals (Procedure) Rules 2000 and the Asylum support Appeals (Procedure) (Amendment) Rules 2004 were both revoked by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008 (SI 2008/2683).

The Tribunal Procedure (1st Tier Tribunal) (Social Entitlement Chamber) Rules 2008 (2008 Rules) set out the overriding objectives and obligations to the Tribunal.

- The overriding objective of the new rules is to enable the Tribunal to deal with cases fairly and justly, which includes:
 - dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
 - avoiding unnecessary formality and seeking flexibility in the proceedings;
 - ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
 - using any special expertise of the Tribunal effectively; and
 - avoiding delay, so far as compatible with proper consideration of the issues.
- Parties must:
 - help the Tribunal to further the overriding objective; and
 - co-operate with the Tribunal generally.

The new rules provide additional powers that have been given to the Asylum Support Tribunal Judges which include:

- Duty to hold an oral hearing unless each party consents or does not object to a paper determination and the Tribunal considers a hearing is not required (Rule 27);

- Power to exclude evidence if not provided within the time directed, or which would otherwise be admissible where it would be unfair to admit it or where the evidence was provided in a manner that did not comply with a direction or a practice direction (Rule 15);
 - Power to issue summonses for witness attendance, the production of a document by a witness and to order a witness to answer questions (Rule 16);
 - Power to automatically strike-out the proceedings or the appropriate part of them if the appellant fails to comply with a direction that stated that failure by a party to comply with the direction would lead to the striking out of the proceedings or that part of them (Rule 8(1))
- The Tribunal must strike out the whole or a part of the proceedings if the Tribunal (Rule 8(2)):
 - a. does not have jurisdiction in relation to the proceedings or that part of them; and
 - b. does not exercise its power under rule 5(3)(k)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.
 - The Tribunal may strike out the whole or a part of the proceedings if (Rule 8(3)):
 - a. the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or part of them;
 - b. the appellant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly; or
 - c. the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.
- Power to make an order prohibiting disclosure of information likely to cause serious harm where it is proportionate to do so (Rule 14);
 - Power to correct accidental clerical slips or omissions in written decisions (Rule 36);
 - Power to set-aside and re-make final decisions in certain circumstances (Rule 37).

Under section 103(1) of the Immigration and Asylum Act 1999, a right of appeal exists against the Secretary of State's decision that an applicant does not qualify for support under section 95, and under section 103(2) against the Secretary of State's decision to stop providing that support before that support would otherwise have come to an end.

Section 103 of the Immigration and Asylum Act 1999 also makes provision for individuals to appeal to the First Tier Tribunal, Asylum Support (Tribunal) against decisions not to provide, or not to continue to provide, support under section 4 of the Immigration and Asylum Act 1999 (as amended) (section 103(2A)).

There is a strict timetable for each stage of the process. Only working days are counted. A working day means any day except Saturday, Sunday, Christmas day, Good Friday or a Bank Holiday under section 1 of the [Banking and Financial Dealings Act 1971](#). In addition, separate Bank Holidays in Scotland and Northern Ireland must be included if the court is situated in one of these regions.

Bank holidays for England, Wales and Northern Ireland may be found at:

<http://www.berr.gov.uk/whatwedo/employment/bank-public-holidays/index.html>

Those for Scotland are at:

<http://www.scotland.gov.uk/Publications/2005/01/bankholidays>

If the Tribunal receive a letter of appeal outside of normal working hours, for example 11:59pm, then that is counted as Day One. This means that there will be appeals for which the Case Owner will not receive notification until Day Two of the appeals timetable.

Asylum Support Adjudicators are now known as **Tribunal Judges**. They may be known as the Tribunal Judge, or may be referred to as the/a Judge whilst exercising their judicial role within the appeals process.

The Notification and Submission Time Frame

Where an asylum seeker is notified of a decision against which they may appeal, he will be sent a notice of appeal with two copies of the decision letter. The decision letter, appeal forms etc are sent by first class recorded delivery. The asylum seeker will have been deemed to have received the decision on the **second working day** after it was sent, unless the contrary is proven.

The appellant then has **three working days (rule 22)** beginning with the date on which the appellant received written notice of the decision being challenged in which to submit an appeal to the Tribunal. This means the Tribunal **must receive the appeal by midnight on day three.**

An appeal must be sent to the Tribunal by the applicant or their representative by post, by fax or by hand.

The Tribunal may accept an out of time appeal (rule 5(3)(a)). The Tribunal's decision will be based on the [overriding objectives](#) (rule 2 of the Tribunal Procedure (1st Tier Tribunal) (Social Entitlement Chamber) Rules 2008).

The Appeal Time Frame

Day ONE of the Appeals Process is the day on which the decision, accompanied by the appeal form is received by the Tribunal.

The Tribunal's staff will check that the appeal form has been completed in full, in English or Welsh, and is signed and dated. They will forward the form to the Appeals Monitoring Team (AMT) who will scan the documents onto the ASYS correspondence screen (Tab 9) and notify the section responsible by assigning the case on ASYS (BPM) and by email giving details of any relevant deadlines. If it is not reasonably practicable for the Tribunal to fax a copy of the notice on the day it was received, they must fax the document as soon as possible on the next working day (**day TWO**).

Following receipt of the email from AMT confirming that an appeal has been brought, the Case Owner should acknowledge the AMT email, and ASYS should be updated and the paper file flagged to show that there is an appeal. Case Owners should include their telephone extension number when minuting ASYS, which will enable the AMT, if required, to promptly contact the Case Owner, helping to ensure that the tight timescales are adhered to. The timetable and each stage of the process should be clearly recorded on the minute sheet and accurately recorded on the Appeals Log (available on the F: drive) as the notifications are received.

The UK Border Agency unit that took the decision to refuse or to terminate support must send or deliver a response (the appeal bundle) to the Tribunal by fax or hand so that it is received within 3 days after the date on which the Tribunal received the notice of appeal, and the appellant and their representative by first class post and fax.

The appeal bundle must include:

- a. a copy of any written record of the decision under challenge, and any [statement of reasons](#) for that decision, if they were not sent with the notice of appeal; and
- b. copies of all documents relevant to the case in the decision maker's possession, unless a practice direction or direction states otherwise.

When a decision maker receives the notice of appeal or a copy of it, the decision maker must also send or deliver a response to the Tribunal within 3 days of the date on which the Tribunal received the notice of appeal.

The response must state:

- a. the name and address of the decision maker;
- b. the name and address of the decision maker's representative (if any);
- c. an address where documents for the decision maker may be sent or delivered;
- d. the names and addresses of any other respondents and their representatives (if any);
- e. whether the decision maker opposes the appellant's case and, if so, any grounds for such opposition which are not set out in any documents which are before the Tribunal; and
- f. any further information or documents required by a practice direction or direction.

If an appeal has been brought and an appeal date given, once the appeal bundle has been prepared, the Case Owner must undertake the following:

- a. Complete a Tribunal Cover Letter, obtaining most of the information from the Notice of Appeal Form. The Case Owner must complete the following sections:
 - Tribunal Reference Number (on Notice of Appeal Form)
 - Appellants Current Address (on Notice of Appeal Form)
 - Application Date (on ASYS)
 - Support Termination Date (on Termination Letter)
 - Asylum Support Regulations (on Termination Letter)
 - Document List
- b. Number each page on the copied documents including the appendices.
- c. Print a generic letter for the Appellant, informing them that an appeal bundle has been faxed to the Tribunal and a copy is enclosed for their information.
- d. Print a Tribunal fax cover sheet.
- e. Place the generic letter on top of one of the copies and send it by first class to the Appellant.
- f. Place the Tribunal fax cover sheet on the other copy and fax it to the Tribunal. The Tribunal's fax number and address can be found in the Notice of Appeal form. At time of publication, this is:

Tribunal Service - Asylum Support

2nd Floor
Anchorage House
2 Clove Crescent
London
E14 2BE
Tel: 020 7538 6171
Fax: 020 7538 6200

On **day FOUR** of the Appeals Process, the Tribunal Judge considers the appeal and sets the hearing date. The Tribunal must hold a hearing before making a decision unless each party consents to the matter being decided without a hearing or has not objected, and the Tribunal considers that it can decide the matter without a hearing [rule 27]. If the Tribunal Judge believes that more evidence is required (from either party), this will be requested in a Directions Order. The Directions Order will be sent to the AMT, who will scan the document onto the ASYS correspondence screen (Tab 9) and notify the section responsible by assigning the case on ASYS (BPM) and by email giving details of any relevant deadlines. If there is to be an oral hearing, the Tribunal Judge must give notice to the appellant and the Secretary of State (i.e. UK Border Agency) of the date on which it is to be held.

The respondent will be automatically prevented from taking further part in the proceedings if they fail to comply with a direction that stated that failure to comply would lead to this outcome.

Oral hearings are normally heard on **day EIGHT** of the Appeals Process. The Tribunal must give 1-5 days notice of the hearing so the hearing may be heard earlier than day eight. In any case the hearing must be held and the appeal determined by **day NINE**.

The Judge must send a Reasons Statement to the appellant or their representative and to the Secretary of State (i.e. UK Border Agency) within three days of the hearing.

If the case is decided without a hearing, the appeal must be determined on the day that the decision is made, that is **day FOUR**, or as soon as possible thereafter, but in any event not later than 5 days after consideration day, i.e. by **day NINE**. In such (“paper”) cases, the Tribunal Judge’s Reasons Statement will be sent on the day the determination is made.

Appeal Outcomes

An adjudication is binding on the day the appeal is determined and must be actioned immediately.

The Tribunal Judge's determination may:

- a. Substitute his decision for the Secretary of State's decision. Substituted decisions can be either conditional or unconditional. An unconditional substituted decision allows the appeal outright, and may include a requirement to make a back payment. This should be explained in the Tribunal Judge's decision. A conditional substituted decision does not allow the appeal outright. An example would include partial entitlement to support (subsistence but not accommodation). Again, this should be fully explained by the Tribunal Judge.
- b. Remit for reconsideration. A Tribunal Judge may remit a case for reconsideration if new factors which may have a material effect on the decision to refuse support have emerged since the original UK Border Agency refusal notice was issued. The Tribunal Judge's Reasons Statement should set out the specific matters to be reviewed during the reconsideration period. Pending reconsideration, the status quo should be restored, subject to any specific recommendation by the Tribunal Judge. Usually, therefore, if previously supported, support should be reinstated; if not, support need not be provided.
- c. Dismiss the appeal.
- d. Decide to strike out the case.

Timetables

The table below relates to the timetable from the refusal notice being served until an appeal is sent to the Tribunal by the applicant or their representative.

Action	Notification and Submission Timetable	Example (latest dates)
UK Border Agency send refusal notice (together with appeal form) to applicant, by 1 st class recorded delivery		Monday 8 June
Notice received by applicant	Two working days later. (Notice is deemed to be received after two days, even if it is delivered the next day, unless the contrary is proven.)	Wednesday 10 June
Submit appeal (appeal received by the Tribunal)	Within a further 3 working days. (Date of submission is day ONE of Appeal Process ; see next table.)	Monday 15 June

The following table is the timetable for the Appeals Process after receipt of an appeal by the Tribunal.

ACTION	DAY (Working Days)	Example (latest dates)
Appeal received by Tribunal	ONE	15 June
Appeal sent to the Case Owner who made the original decision	ONE (or Day Two if not reasonably practicable to send on Day One)	15/16 June
Decision reviewed and grounds of appeal considered	TWO OR THREE	16/17 June
Response (appeal bundle) sent	TWO OR THREE	16/17 June
Judge considers whether there will be an oral hearing and	FOUR	18 June

sets hearing date etc		
Appeal bundle sent to POU if an oral hearing has been arranged	FOUR	18 June
If no oral hearing - Appeal determined	NOT LATER THAN DAY NINE	25 June
Oral hearing	NINE	25 June
Reasons Statement sent to appellant/representative and to the Secretary of State	TEN to TWELVE	26-30 June

Withdrawal of Decision at the First-Tier Tribunal – Asylum Support Appeal Stage by the UK Border Agency

If following a case review the Case Owner concludes that the original decision was incorrect, the original decision must be withdrawn ([Pursuant of rule 17 of the 2008 Rules](#)) and replaced with a fresh decision.

Although the UK Border Agency can and should withdraw an incorrect decision at the appeal stage, it is imperative that such courses of action are kept to a minimum. Case Owners must take extra care to ensure that the initial section 4/95 eligibility decision is correct and that the refusal/discontinuation letter refuses/discontinues support under the appropriate criteria.

Withdrawal of decision before 12am the day before the hearing

When withdrawing a decision before 12 noon the day before the appeal hearing, the Case Owner must immediately undertake the following:

1. **Draft a fresh decision letter** - This letter should clearly state that the original decision to refuse or discontinue support has been withdrawn and has been replaced by the contents of the fresh decision letter.
2. The fresh decision letter should be posted first class and faxed to the appellant and/or their representative.
3. A withdrawal request must be faxed to the First-Tier Tribunal – Asylum Support (Tribunal) and the Presenting Officers Unit (if there was to be an oral appeal) informing them that the UK Border Agency's decision has been withdrawn, notifying them of the new decision. A copy of the decision letter should also be sent.
4. If the appellant is now assessed as eligible, support should be immediately arranged / maintained.

Withdrawal of decision on day of appeal hearing or after 12am the day before the appeal hearing

Unless an application to withdraw a decision at the appeal stage is received before 12 noon the day before the appeal hearing, the application for withdrawal must be made by the UK Border Agency in person in open court to the Tribunal Judge.

The Tribunal will only grant the withdrawal application if either:

- The UK Border Agency confirms in writing that the decision under appeal is being withdrawn and the appellant will be granted support immediately; or

- The decision to be withdrawn is to be substituted with a fresh refusal/discontinuation decision which is available for service at the hearing, and the UK Border Agency and the appellant or their representative agrees that the hearing can proceed against the fresh refusal/discontinuation decision; or
- The fresh refusal/discontinuation decision is available for service at the hearing but if the appellant or their representative is not ready to proceed, the UK Border Agency consents to an adjournment of the appeal hearing (not exceeding 14 calendar days) against the new discontinuation decision and, if support was discontinued, confirms in writing that support will continue until the appeal has been heard and finally determined.

Tribunal Judge accepts the withdrawal

If the Tribunal Judge accepts the withdrawal, the Tribunal will confirm the withdrawal of the appeal by faxing a Withdrawal Notice to the regional asylum support team. On receipt of the Withdrawal Notice the Case Owner should scan the Withdrawal Notice on to ASYS.

Withdrawal of Decision Notifications

Support will be arranged:

"I write on behalf of the Secretary of State. Following a review of the appellant's case I have decided to withdraw the decision of [insert date] to refuse/discontinue *(Delete as appropriate)* support under section 4/95 *(Delete as appropriate)* of the Immigration and Asylum Act 1999. The Secretary of State will make immediate arrangements for support to be granted/re-instated *(Delete as appropriate)*. Therefore the Secretary of State withdraws from the appeal. I enclose a copy of the fresh decision letter.

If you have any further queries, please do not hesitate to contact me on [insert telephone number]."

Support is still being refused or discontinued:

"I write on behalf of the Secretary of State. Following a review of the appellant's case, I have decided to withdraw the decision of [insert date] to refuse/discontinue *(Delete as appropriate)* support under section 4/95 *(Delete as appropriate)* of the Immigration and Asylum Act 1999. A new refusal/discontinuation *(Delete as appropriate)* decision has been issued. The Secretary of State intends to continue as a party in the appeal. I enclose a copy of the fresh decision letter.

If you have any further queries, please do not hesitate to contact me on [insert telephone number.]"

Notes

This Policy Bulletin was first issued under the title “Appeals Process”. It incorporates the content of Policy Bulletin 9, “Asylum Support Adjudicators”, which has now been withdrawn.

Document Control

Change Record

Version	Authors	Date	Change Reference
7.1	BF	25/11/08	Update branding only
8	BF	23/03/09	Amendments following introduction of the Tribunal Procedure (1 st Tier Tribunal) (Social Entitlement Chamber) Rules 2008 (SI 2008/2685)
9	SM	11/09/09	Tribunal Service – Asylum Support change of address
10	SM	08/07/11	Withdrawal guidance inserted.