

# SUBSTANTIVE APPEAL HEARINGS

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## Introduction

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This section sets out guidance for Regional Asylum Team Case Owners and team support on the processes and procedures to be followed when dealing with the substantive appeal against the refusal of an asylum claim.

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## Preparation for the Appeal Hearing

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In preparation for the substantive hearing, the Case Owner should:

- Review the case file before the appeal hearing
- Review the Case management Plan
- Review CMR Record Sheet ASL.2945 and ensure that any actions arising from the CMR hearing have been completed
- Ensure that all relevant documents have been despatched to the AIT, the appellant and representatives

Case Owners will develop their own method of written preparation to help them to present the case effectively at the hearing. This will include:

- Identifying the areas of strength and weakness in the Home Office case
- Any preliminary issues that will need to be addressed before the hearing can proceed
- Identifying areas that need to be confirmed/explored by means of cross-examining the appellant and any other witnesses, and decide appropriate lines of questioning
- A summary of the submissions they intend to make to the court

Case Owners will need to bear in mind that their preparation may need to be revised in the light of developments at the CMR hearing.

The Case Owner should liaise with the Presenting Officer who has been allocated the court list on which the Asylum Team appeal is listed to ensure that they are aware that the appeal will be presented by an Asylum Team Case Owner.

The 'Appeal Maintenance' screen in CID should be checked regularly by a Case Owner, to ensure that any changes of location or hearing date are picked up quickly so that arrangements can be made to reallocate the appeal to another Case Owner if necessary.

For further details on how to prepare for an appeal hearing, please see the Asylum Instruction "Appeal Process After Initial Decision Checklist"

### 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.

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## Appeal to be heard before a Senior Immigration Judge or an Immigration Panel

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AIT may decide (at any time before the substantive hearing) that the issues arising in a particular case are complex and therefore direct that the case should be heard before an Immigration Panel or before a Senior Immigration Judge rather than a single Judge.

In these circumstances, the Case Owner should consult the team leader immediately to decide how to deal with the appeal if they are appearing before a panel for the first time. It may be appropriate for arrangements to be made for the file to be transferred to a senior presenting officer at the relevant POU to present the case before the appeal. If the case is transferred to a senior presenting officer to present before a panel, the Case Owner should liaise with the POU and ensure that the file is returned to the Asylum Team to continue consideration of the case once the appeal has been heard, and the Case Owner should ensure that contact with the POU is maintained in order to monitor the progress of the case.

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## Request for Appeal to be Adjourned

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The rules relating to the circumstances in which a Judge can grant an adjournment are contained in Rule 21 of the Procedure Rules 2005. The hearing of an appeal may not be adjourned unless the Judge is satisfied that the appeal cannot otherwise be justly determined.

A request for adjournment may be made to the AIT by the appellant or their representative at any time after the hearing date is set. Where the request is made by direct contact with the AIT, the Home Office will not be aware of the request unless and until it has been granted by the AIT. The AIT will notify APC, who in turn informs the relevant POU. **It is the responsibility of Case Owners to check CID regularly to ensure that they are aware of any change to the date and location of the appeal hearing.**

A request may be made by the appellant or their representative at the CMR hearing; however such a request may also be raised as a preliminary issue, at the substantive hearing itself. The appellant or their representative may argue that more time is needed to obtain evidence to support the appeal, such as a medical report or document from abroad. The Case Owner should consider the time that has already been available to the appellant to gather evidence and also how central this evidence would be to the grounds of appeal.

Where the asylum claim was refused under paragraph 339M as well as paragraph 336, i.e. where non-compliance was part of the reason for refusing the claim, strong representations should be made to the Judge that the appellant has previously failed to take advantage of opportunities to explain the basis of their claim and had not provided reasonable explanation for their actions. There should therefore be no further justification for allowing additional time now.

Should an adjournment be requested because of the appellant's ill health, the Case Owner presenting the appeal should, from their knowledge of the case and the appellant, be in a position to say whether the Home Office would object.

### Home Office seeks adjournment

There may be circumstances where the Home Office may wish to seek an adjournment. This may apply for example where a policy decision has been made to seek the adjournment of a particular category of asylum appeal pending resolution of a legal or policy issue. Case Owners should only apply for an adjournment in very exceptional cases, and with the approval of a Senior Caseworker.

### Where adjournment is agreed

Where the Judge decides to adjourn the substantive hearing, Rule 21(4) requires that the revised date should be no later than is required by the circumstances and should not be more than 28 days after the original hearing date unless there are exceptional circumstances to extend beyond 28 days.

The Case Owner should:

- Update the case management plan to show the date and location of the rescheduled appeal and the reasons for the adjournment
- Attach a copy of the Directions to the file
- Update CID

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## Non-Appearance of the Appellant or Representative at the Appeal Hearing

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The hearing notice for the substantive hearing draws the attention of the appellant and the respondent (or their representative) to the requirement to attend the hearing. Should neither the appellant nor their representative attend the hearing, the Judge will consider whether the notice of the hearing was properly served.

According to Rule 19 of the Procedure Rules 2005, the appellate authorities must proceed with the hearing in the absence of a party provided notice was given of the date, time and place of the hearing, and the appellant or representative are still absent without satisfactory explanation for the absence.

The Case Owner should

- Strongly resist any suggestion that the appeal should be adjourned due to the non appearance of the appellant or their representative
- Draw to the judge's attention the fact that the notice of hearing was correctly issued
- Draw to the judge's attention any information which explains the appellant's (or representative's) non-attendance e.g. any instances of non-compliance with requirements such as reporting events and specifically non-compliance which led to the claim being refused partly on the basis of paragraph 339M of the Immigration Rules.

The Judge may ask the Clerk to the Court to make enquiries with respect to the non-appearance of the appellant or the representative before proceeding. While the Clerk does so, the next case on the case list may be dealt with, and the Case Owner will be required to remain in Court until the issue is resolved.

The Judge may then decide to deal with the hearing in the absence of the appellant or representative, to adjourn the hearing until a later date, or, exceptionally, to determine the appeal.

Where the appeal hearing proceeds in the absence of the appellant, the Case Owner will clearly be unable to cross examine them. The Case Owner should proceed and make their submissions. The appellant's representative if present and chooses may also make submissions. The appeal will then be decided on the papers already before the AIT and the submissions made.

## Record of Proceedings

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It is important that the Case Owner presenting the case makes a written record of the proceedings. The following details should be recorded:

- Name of Judge
- Name of appellant's representative
- Any change to the appellant's address
- Names of witnesses and their relationship to the appellant
- Any documents submitted by either party
- Any preliminary issues raised and how they were dealt with

While it is not necessary to make a verbatim record of the proceedings, all questions asked by the Judge, by the representative and by the Home Office, and of the responses given should be noted.

A summary of submissions made should also be included.

The record of proceedings should be attached to the Home Office file.

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## Preparing the SAT (Specialist Appeals Team) Minute Sheet

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On return to the office after a substantive appeal hearing, the Case Owner should complete a minute to of the Specialist Appeals Team (SAT), using the template ICD.2742. The minute should record:

- name of the judge
- name of the representative
- names of all witnesses
- which witnesses gave oral evidence and whether or not they were cross examined
- the main points made in submissions
- record of all material submitted by both parties on the day (such as case law)
- anything else the Case Owner considers relevant to considering whether to challenge an allowed determination
- an indication of what the Case Owner considers would be a fair and appropriate outcome of the appeal

The minute should be printed and attached to the file. By doing this, SAT staff will be able to access the minute through the 'Printed Documents' facility in DocGen immediately they are notified that an appeal has been allowed, and they can consider the determination together with the ICD.2742 minute.

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## Awaiting the Determination of the AIT

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Immigration Judges have 10 working days to decide an appeal and forward their determination to the AIT, who in turn notify the Appeals Determination Management Unit (ADMU) by email or fax.

From 27<sup>th</sup> April 2009, the Appeals Determination Management Unit (ADMU) became responsible for the service of the following asylum notices and determinations on behalf of the regional asylum teams:

- AIT 75 – Immigration Judge hearing determination (first hearing)
- AIT 76 – reconsideration hearing determination
- AIT 78 – notice that the AIT has ordered reconsideration
- AIT 80 – notice that the AIT has not ordered reconsideration
- High Court orders

ADMU will aim to serve all the above notices on representatives and appellants within 48 hours of receipt.

ADMU are also responsible for updating CID for all asylum cases where an application for reconsideration has been made by the appellant (or representative) to the Asylum and Immigration Tribunal (AIT) or the High Court

**Case owners will still be able to choose to serve in person but must update the Special Conditions screen in CID and inform ADMU by email if they intend to do so ('ADMU Determinations' (Indigo) inbox)**

## Glossary

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<b>Term</b>	<b>Meaning</b>
CMR sheet	Case Management Review sheet – this is completed by the Case Owner at the CMR hearing
ASL.2945	Case Management Review sheet
ICD.2742	Specialist Appeals Team minute sheet to be completed by the Case Owner after a substantive appeal hearing

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## Document Control

### Change Record

Version	Authors	Date	Change Reference
1.0	SS	01/02/07	Reviewed & style changed to suit web 'look'
2.0	JW	10/10/07	Updated to reflect the new onwards rights process. ORAT replaced by SAT
3.0	RA	29/10/09	Included reference to s55 BCIA 2009 (Children's duty)

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