

ASYLUM APPEAL HEARING – CASE MANAGEMENT REVIEW

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Introduction

This Section sets out guidance for New Asylum Model Case Owners and team support on the processes to be followed when dealing with the first stages of an appeal against the refusal of an asylum claim.

Where an asylum claim is refused and the consequent immigration decision attracts a right of appeal, the appellant is required to lodge an appeal with the Immigration and Asylum Tribunal (AIT) within the following guidelines:

Suspensive (in-country) right of appeal – not detained	10 working days of service of decision
Suspensive (in-country) right of appeal – detained	5 working days of service of decision
Non-suspensive right of appeal	28 working days from the date of departure from the UK

The AIT must notify the respondent as soon as an appeal has been lodged under rule 12 of the Procedure Rules.

Under Rule 45 of the Asylum and Immigration Tribunal (Procedure) Rules 2005, the Tribunal can request for a Case Management Review (CMR) hearing to be held. A CMR hearing is held in respect of every asylum appeal (other than an appeal in respect of a detained fast track claim or where a Tribunal determination has been ordered to be reconsidered) where the appellant:

- Is present in the UK
- Has a right of appeal while in the UK

When an appeal has been lodged, AIT decides on the date and location of the appeal hearing, and also arranges a case management review (CMR). AIT notifies the appellant and the Appeals Processing Centre (APC), who update CID accordingly.

The purpose of the CMR

The main purpose of the CMR is to confirm the points in issue prior to the substantive hearing. The judge conducting the hearing should be seeking to confirm the issues that will be raised by either side. Both parties are required to serve any documents and witness statements they intend to rely on, or confirm that these will be served.

The CMR is regarded as a hearing of the appeal and is held before an Immigration Judge. Both the appellant and respondent (or their representatives) are directed to attend. Wherever practicable, the Case Owner who is responsible for the management of an asylum claim should present the Home Office case at both the CMR and the substantive appeal hearing.

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.

Date and Location of the CMR

The Asylum and Immigration Tribunal (AIT) will arrange for a CMR to be held 10 days after the appeal is lodged, in the same court as the substantive appeal which will take place on day 20 of the appeal process.

The workflow team within each asylum team receives a daily report listing all appeals lodged in respect of cases allocated to the New Asylum Model. The Case Owner will therefore be notified within a day of an appeal being lodged at the AIT.

APC are responsible for updating CID when an appeal is lodged and Case Owners can also confirm, by checking on CID, that an appeal has been lodged.

Preparation for the CMR

Prior to going to the CMR Hearing, the Case Owner should prepare the following in order to take them to the CMR:

- Prepare a CMR Record Sheet ASL.2945 (available in DocGen)
- Ensure that the appeal bundles are prepared and despatched to both the AIT and the appellant in good time See Asylum Instruction on Appeal Bundling.
- Ensure that the appellant/representative have been notified of the CMR taking care that the information has been sent to the correct address.
- Prepare two copies of any documents that are to be taken to court, which were not included in the appeal bundle e.g. updated country information (one for the judge & the other for the appellant/re.)
- Prepare a typed copy of the interview record, if the written record is not legible. See Asylum Instruction on Sending illegible interview record to the FSD Typing Bureau.

At the CMR, the Case Owner should complete the relevant sections of the CMR Record Sheet ASL.2945.

CMR List

It is usual for about 10 CMRs to be allocated to a specific court in one day. Asylum cases managed within the New Asylum Model are not listed separately from appeals to be presented by Presenting Officers.

Therefore Case Owners must liaise with the appropriate Presenting Officers' Unit (POU) to ensure that the Presenting Officer dealing with the other cases on that day's CMR list is aware that an Asylum Team Case Owner will be presenting any New Asylum Model cases.

Non-Appearance of the Appellant or Representative at the CMR

The hearing notice for the CMR draws the attention of the appellant and the respondent (or their representative) to the requirement to attend the CMR. Should neither the appellant nor their representative attend the CMR, 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 or their representative 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.

At the CMR, the Case Owner should:

- 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

The judge may ask the Clerk to the Court to make enquiries to confirm that this is the case before proceeding. While the Clerk does so, the next case on the CMR list will 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 CMR in the absence of the appellant or representative, to adjourn the CMR until a later date, or, exceptionally, to determine the appeal.

Appeal Determined at CMR

Rule 15(2) (c) and (d) of the Procedure Rules allows the judge to determine the appeal if there is no appearance or reply to directions.

Exceptionally, the Immigration Judge may determine the appeal on the evidence already presented where neither the appellant, nor their representative, attends the CMR and where no reply has been made to directions.

In these cases, it is important that the Case Owner brings to the attention of the Immigration Judge the fact that determining the appeal at the CMR can lead to considerable difficulties. The Immigration Judge would have to consider the appellant's case extremely carefully in order to ensure that a reconsideration order is not requested.

For the action to be taken when an appeal has been allowed or dismissed see Asylum Instruction in Appeal Hearings – Service of Determinations.

Request to Concede Aspects of the Case

Representatives or judges may ask the Case Owner to concede aspects of the case at the CMR. Prior to the CMR, the Case Owner should have identified any areas likely to become an issue and will have obtained approval from a Senior Caseworker to make any concessions. However, new evidence may be submitted or new issues may be raised at the CMR. Case Owners should refuse to concede points, even where the Home Office case appears weak, because the Case Owner will need the opportunity to research the issue before the substantive hearing. The judge does not have the power to require the Case Owner presenting the case to concede an issue.

Following the CMR, the Case Owner should consider the request made and consult a Senior Caseworker if it is considered that it would be right to make a concession at the substantive appeal hearing.

Directions at Conclusion of the CMR

At the end of the CMR the Tribunal will give the Case Owner any further written directions relating to the conduct of the appeal.

In addition, the Case Owner should make notes of any issues that have been agreed at the CMR hearing as being relevant to the determination of the appeal and of any concessions made by either appellant or respondent.

The court directions should be attached to the file.

Appeal to Proceed to Substantive Appeal Hearing

In the majority of cases both parties will be ready to proceed and the Immigration Judge will direct the substantive hearing to take place on the pre-arranged date.

Following the CMR, the Case Owner should follow the guidance in Action to be taken after the CMR has Taken Place, see below.

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Actions to be taken after the CMR has Taken Place

On return to the office following the CMR, the Case Owner should complete the remaining sections of the CMR Record Sheet ASL.2945 and attach it to the file, update the 'Appeal Maintenance' screen on CID, and update the CMP with:

- Whether the appellant and representative attended
- Any objective notes of the appellant's behaviour
- Any new submissions presented by the appellant's representative
- Any directions of the Immigration Judge
- Any other information that the Case Owner considers relevant to the case

Case Owners must ensure that they comply with any directions given to the Home Office at the CMR hearing.

The Case Owner must then prepare for the substantive hearing. See Asylum Instruction on Substantive Hearings for further information

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Request for Appeal to be Adjourned

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 notifies APC, who in turn inform 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 for the substantive appeal hearing to be adjourned to a later date. Such a request may also be made, 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. In the majority of cases, the Case Owner must object to this request, arguing that it would simply delay proceedings and add to the overall cost. However, if the Case Owner believes that the appellant has not had sufficient time to gather information or that the evidence that the appellant is seeking to obtain, is particularly relevant to the appeal, then they should not object to adjournment request. 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, the Case Owner should make strong representations 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. Therefore the Case Owner should argue that there should be no further justification for allowing additional time now.

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

Home Office seeks adjournment

There may be circumstances where the Home Office wishes 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 should seek 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.

The Case Owner should:

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

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Glossary

Term	Meaning
ASL.2945	CMR Record sheet

This glossary is for the insertion of any letters or minute sheets referred to in the guidance

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Document Control

Change Record

Version	Authors	Date	Change Reference
1.0	SS	17/02/07	New web style implemented
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