



Home Office

# Educational Testing Service (ETS): casework instructions

Version 5.0

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# About this guidance

This instruction provides guidance on how to manage cases affected by the historic English language qualification administered by Educational Testing Services (ETS).

## Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email Work & Study Technical Specialist Team Casework Referrals.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Review, Atlas and Forms team.

## Publication

Below is information on when this version of the guidance was published:

- version **5.0**
- published for Home Office staff on **19 June 2025**

## Changes from last version of this guidance

This guidance has been updated to include:

- key extracts from the Upper Tribunal (UT) determination in DK and RK [2022] and Varkey and Joseph [2024]
- case consideration flowcharts
- how to assess settlement applications under Long Residency with regards to 'continuous residence' and 'lawful presence'
- minded to refuse (MTR) process, including instructions to obtain voice recording of ETS tests from ETS's solicitors
- how to implement appeal decisions and close ETS alerts
- sample grant and refusal wordings

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# Purpose

Following the key determinations in the ETS cases [DK and RK [2022], where the Presidential Panel of the Upper Tribunal re-examined earlier caselaw and all evidence used by the Home Office to support the refusal of an application or cancellation of permission to enter/stay, it has been necessary to update the casework guidance accordingly.

This update includes the key conclusions drawn by the Presidential Panel and reaffirms the process to follow when dealing with applications within the ETS cohort.

Additionally, the guidance addresses process gaps in the previous versions identified through consultation with staff.

## Key determinations

### DK and RK v Secretary of State for the Home Department [2022] UKUT 00112 (IAC)

The recent reported UT case of DK and RK re-examined in detail the reliability of the evidence used by the Secretary of State for the Home Department (SSHD) to refuse or cancel permission to stay, including the evidence of witnesses who appeared before the All-Party Parliamentary Group (APPG) chaired by Sir Stephen Timms MP. The significance of this case is (1) that it provides authoritative guidance on the evidential value of the 'generic' evidence relied upon by SSHD in the 'fraud factory' cases and (2) there would need to be good reason, which would inevitably mean substantial fresh evidence for another Upper Tribunal (UT) to revisit and overturn the determination [29] (SSHD v Akter and Others [2022]).

On 25 March 2022, the Presidential Panel of the UT concluded in their determination in DK and RK that:

...despite the general challenges made, both in judicial proceedings and elsewhere, there is no good reason to conclude that the evidence does not accurately identify those who cheated. It is amply sufficient to prove the matter on the balance of probabilities, which is the correct legal standard [4].

...we do not consider that the evidential burden on the respondent in these cases was discharged by only a narrow margin [128]. (SM and Qadir v SSHD).

It is clear beyond a peradventure that the appellants had a case to answer. The real position is that mere assertions of ignorance or honesty by those whose results are identified as obtained by a proxy are very unlikely to prevent the Secretary of State from showing that, on the balance of probabilities, the story shown by the documents is the true one. It will be and remain not merely the probable fact, but the highly probable fact. Any determination of an appeal of this sort must take that into account in assessing whether the respondent has proved the dishonesty on the balance of probabilities.

The determination supported the SSHD's response in tackling those who had been found or were suspected to have defrauded the system. In areas where ETS's evidence used by the Home Office has come under repeated criticism and until this point has been open to challenge, such as the voice recognition process or the failure of ETS to keep accurate records ('the chain of custody argument'), the Upper Tribunal (UT) made findings that in general there was no good reason to doubt the result of the analysis.

They refer to the:

...virtual exclusion of suspicion of relevant error by ETS [126] and the... voice recognition process is clearly and overwhelmingly reliable [103].

... evidence [being] ample to discharge Secretary of State's burden [27].

...the evidence showing fraudulent activity in a number of ETS centres (including UTC and NLC) is overwhelming. It is clear beyond a doubt that these were institutions for the manufacture of fraudulent qualifications [67].

...the voice recognition process [being] clearly and overwhelmingly reliable in pointing to an individual test entry as the product of a repeated voice" [103].

For more details, including the determinations in DK and RK, see: [Tribunal decisions](#).

## Varkey & Joseph v Secretary of State for the Home Department [2024] UKUT00142 (AIC)

The key points from the Varkey & Joseph determinations are:

- the Upper Tribunal (UT) concluded that the SSHD had discharged the evidential burden of proof – “we are entirely satisfied that the respondent has discharged the burden that the first appellant employed dishonesty to secure the TOEIC ‘speaking and writing’ score that he relied upon in support of his application for entry [sic] leave to enter the UK” [136]
- the UT agreed that there was widespread fraud and cheating – “we are left in no doubt that in general, there was widespread cheating and test centres adopted the less sophisticated methods available of manipulating test results, working in collusion with candidates” – “the general conclusions reached by the Tribunal in DK and RK are not in our judgment in any way undermined” [108]
- the UT also concluded – “the evidence before us simply serves to re-enforce the fact that there was widespread fraud and cheating at ETS test centres. As the Tribunal said in DK and RK, it is clear beyond peradventure that where there is evidence from ETS that points to the test relied upon by the individual as having been taken by someone other than that person, that is strong

evidence that will weigh against the individual and calls for a credible explanation” [113]

- The UT, when examining the evidence regarding ETS’s systems and processes, accepted that no system or process is infallible. Comparisons were made to the Post Office Litigation. However, the UT concluded – “unlike in the Post Office litigation, there is no evidence that there were bugs or glitches in the hardware or software used by ETS, or manipulation of results by ETS itself that caused tests to be erroneously attributed candidates” [58]

In conclusion, the determination clearly signals the UT’s view that the evidence used in ETS is both reliable and sufficient to discharge the burden of proof which is the balance of probability. However, an appellant could still rebut the allegation, albeit with more than a bare assertion of innocence being required to be capable of casting serious doubt on the reliability of the results.

The Court of Appeal has also observed, importantly, that the fact that the oral evidence was given consistently and with apparent conviction, and thus was credible if viewed in isolation, is not enough (RAM v SSHD [2023] EWCA Civ 1323, at 14 per Underhill LJ).

For more details, including the determinations in Varkey and Joseph, see: [Tribunal decisions](#).

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# Background

This section provides a general background to the Educational Testing System (ETS) fraud investigation of 2014, in particular the widespread cheating in TOEIC tests (Test of English for International Communication) administered by ETS.

The Home Office had begun to investigate abuse within educational institutions as early as 2010 and was alert to issues at SELT (Secure English Language Tests) test centres by 2013.

However, the organised fraud at ETS test centres was publicly revealed after a Panorama exposé aired in February 2014. Undercover reporters gained access to several test centres across the UK where TOEIC tests were being taken by people subject to immigration control and who required proof of their English language skills to make an application for permission to stay. Using covert recording, the BBC investigation revealed significant fraud at the test centres.

Investigation into this abuse revealed that some TOEIC English tests accredited by ETS were not taken by the actual candidate but by 'proxy' test takers.

The abuse included but was not limited to:

- the use of 'proxies' to undertake speaking and writing tests on behalf of the candidates
- the provision of correct answers for those sitting written tests

Home Office investigations revealed systemic cheating indicative of extremely serious, large scale, organised fraud, and a significant attempt to undermine effective immigration control.

ETS's head office in the USA identified a range of abuse including the use of proxy test takers. Through an analysis of speaking tests using voice recognition software and trained specialists, ETS were able to accurately determine which tests were taken by a proxy test taker.

The analysed results were divided into 2 types:

- invalid - the term is used in cases where ETS voice analysis identified that a proxy test taker was used
- questionable - the term is used where ETS examined all available evidence and determined that the test was not taken in genuine test conditions - this category will include candidates that did use proxies, but the voice recognition analysis was unable conclusively determine that a proxy test taker was used as they may not have sat other or multiple tests within the same batch or test sessions - in most cases, ETS had evidence to prove that test sessions were
  - conducted fraudulently but were unable to conclusively prove what method of cheating was used

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# Case consideration

There will be slight differences in how you consider these cases depending on the applicant's immigration history and whether they are making an in-country or out of country application and whether the applicant's test is classed as invalid or questionable.

Where a test certificate has been classed as **invalid**, Educational Testing System (ETS) have confirmed through voice-matching analysis that cheating is likely to have taken place.

Where an applicant has a **questionable** test certificate, it is important to establish what was done at the time the issue was first identified to determine the correct course of action.

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# Temporary admission / bail in relation to Long Residency applications

The Immigration Rules pertaining to temporary admission / bail changed on 13 April 2023 to state that any period of bail cannot be counted as part of continuous lawful presence.

However, applications made prior to 13 April 2023, the position being taken in those cases where the temporary admission / bail period was followed by a grant of permission to stay, this period can be counted towards an applicant's lawful presence if they are applying for settlement under Long Residency.

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# Certification as clearly unfounded

Where an **in-country** Family / Private Life application or Human Rights claim is refused, consider certifying the claim under section 94 of the Nationality, Immigration and Asylum Act 2002 where there has been a finding of ETS deception by a Court or Tribunal in favour of the Home Office.

- certify a Human Rights claim as clearly unfounded if there has been a criminal conviction or a finding of deception by a Court or Tribunal
- where there are no findings by the Court or Tribunal, **do not certify** on ETS grounds because the applicant must have the right to challenge the allegation of ETS deception
- if an applicant has a pending criminal conviction, **do not certify** the application until the hearing has been concluded
- if a decision is taken to refuse a Human Rights claim and certify it as unfounded and there is **not** a Court or Tribunal finding on ETS deception to support the certification, if a later decision is taken to quash the certification, the ETS deception can no longer be relied upon in any future decision: this is because the threshold for deception is high in certification cases and therefore unless there is no doubt that deception has been practiced (for example, where there has been a criminal conviction or a finding of deception by a Court or Tribunal) the case must not be certified

For further guidance on the use of certification see: Certification and out of country appeals (clearly unfounded claims).

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## Further guidance on the MTR process

This section explains when to request for further information using the Minded to Refuse (MTR) letter. It also explains how to deal with any response or failure to respond to an MTR request.

For further information on the MTR process see: Suitability: false representations.

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# Applications for Naturalisation

Where there is evidence that a person has used deception in obtaining an ETS certificate, this should be considered relevant to the consideration of good character.

For further instructions see: Nationality policy - good character.

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# Implementing appeals

It is important to highlight that not all ETS related appeals are allowed on the basis that cheating in a TOEIC (Test of English for International Communication) test was not proven. Often an appeal can be allowed only based on Human Rights grounds, but the Judge may determine that the appellant did or did not cheat in their ETS (Educational Testing Services) test:

- if an individual used an invalid / questionable TOEIC certificate in support of any application wins the appeal on Human Rights grounds **only**, then a grant of 30 months permission to stay should be implemented
- if there is a finding that the applicant did not cheat in the ETS test, and all other requirements are met, the applicant should for in-country applications granted a period of 6 month leave outside the rules, which, the applicant must then apply to extend their permission to stay under a category of their choosing or leave the UK. For out of country appeal the only appropriate remedy is to offer the individual a free entry clearance application once they have identified the most suitable route for them to return to the UK
- if there is a finding that the applicant did cheat in the ETS test, even if all other requirements are met, they must be placed on the 10-year route as they will still fail on suitability

However, if the applicant submitted an ILR application and the appeal has been won on both ETS and HR grounds proceed to grant ILR.

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# Actions by Immigration Enforcement in ETS Cases

Where the ETS deception was challenged in an appeal or judicial review, but the appellant was found by the court to have used deception, false representations in a previous application can be maintained.

If a person liable for removal and they do not dispute the ETS deception when their current circumstances are considered, then there is no need to consider the ETS as an issue distinct from any other representations made in response to the Notice of Liability to Remove.

Where the Home Office has refused or cancelled permission under deception in obtaining an ETS certificate, and a judicial review or an appeal has been unsuccessful, the finding of deception should be maintained.

In other cases, caseworkers in the National Returns Progression Command must consider the case and decide whether to grant permission to stay based on Family / Private Life grounds. As is normal procedure, Immigration Enforcement (IE) will do a current circumstances interview prior to removal.

Where a fresh human rights claim is being raised for the first time, it must be considered in line with the guidance in Family (Appendix FM: family members)

Where the human rights claim is a further submission, it must be considered in line with the Further submissions guidance

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