



Tribunals Judiciary

PRACTICE STATEMENTS

IMMIGRATION AND ASYLUM CHAMBERS OF THE FIRST-TIER TRIBUNAL AND THE UPPER TRIBUNAL

Contents

PART 1

PRELIMINARY

1. Interpretation, etc.

PART 2

PRACTICE STATEMENTS FOR THE IMMIGRATION AND ASYLUM CHAMBER OF THE FIRST-TIER TRIBUNAL

2. Composition of Immigration and Asylum Chamber of the First-tier Tribunal
3. Where the Tribunal may not accept a notice of appeal
4. Review of decision of First-tier Tribunal
5. Record of proceedings

PART 3

PRACTICE STATEMENTS FOR THE IMMIGRATION AND ASYLUM CHAMBER OF THE UPPER TRIBUNAL

6. Composition of Immigration and Asylum Chamber of the Upper Tribunal
7. Disposal of appeals in Upper Tribunal

PART 4

PRACTICE STATEMENTS FOR THE IMMIGRATION AND ASYLUM CHAMBERS OF THE FIRST-TIER TRIBUNAL AND THE UPPER TRIBUNAL

8. Presiding member
9. Transfer of proceedings
10. Format etc. of determinations
11. Reporting of determinations

PART 1
PRELIMINARY

1. *Interpretation, etc.*

1.1 In these Practice Statements:

“the 2007 Act” means the Tribunals, Courts and Enforcement Act 2007;

“the 2008 Order” means the First-tier Tribunal and Upper Tribunal (Composition of Tribunal) Order 2008;

“Chamber President” means the President of the Immigration and Asylum Chamber of the First-tier Tribunal or of the Upper Tribunal, as the case may be;

“CMR hearing” means a case management review hearing;

“First-tier rule”, followed by a number, means the rule bearing that number in the Asylum and Immigration Tribunal (Procedure) Rules 2005;

“First-tier judge” means a judge of the First-tier Tribunal;

“other member” means a person who, immediately before the repeal by the Transfer of Functions Order of section 5(2)(d) of the 2007 Act, was a member of the Upper Tribunal by reason of that enactment;

“Practice Directions” means the Practice Directions - *Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal* (dated 10 February 2010); and “Practice Direction”, followed by a number, means the Direction bearing that number in the Practice Directions;

“Senior President” means the Senior President of Tribunals;

“Transfer of Functions Order” means the Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (SI/2010/21);

“The Tribunal” means the Immigration and Asylum Chamber of the First-tier Tribunal or of the Upper Tribunal, as the case may be;

“Upper Tribunal judge” means a judge of the Upper Tribunal;

“UT Rules” means the Tribunal Procedure (Upper Tribunal) Rules 2008; and “UT rule”, followed by a number, means the rule bearing that number in the UT Rules.

- 1.2 Other expressions used in these Practice Statements have the same meanings as in the 2007 Act.
- 1.3 Any reference in these Practice Statements to an enactment is a reference to that enactment as amended by or under any other enactment.
- 1.4 These Practice Statements come into force on 15 February 2010.
- 1.5 These Practice Statements apply, as appropriate, in relation to transitional cases to which Schedule 4 to the Transfer of Functions Order applies; and references to the First-tier Tribunal and the Upper Tribunal shall be construed accordingly.

PART 2

PRACTICE STATEMENTS FOR THE IMMIGRATION AND ASYLUM CHAMBER OF THE FIRST-TIER TRIBUNAL

2. *Composition of Immigration and Asylum Chamber of the First-tier Tribunal*

2.1 Subject to paragraph 2.2, any decision that falls to be decided by the First-tier Tribunal in respect of any matter specified in the first column below is to be decided by the number and type of members specified in the second column.

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|-----|--|--|
| (1) | Whether notice of appeal given in time/whether to extend time for appealing (except where First-tier rule 11 applies)/refusal to accept notice of appeal (First-tier rule 9) | One First-tier judge |
| (2) | Whether to extend time for appealing where First-tier rule 11 applies (special provisions for imminent removal cases) | One First-tier judge, from those approved by the Senior President to make such decisions |
| (3) | All appeals or other matters which are not specified below | One First-tier judge or a panel of two or three members, at least one of whom must be a First-tier judge and no more than one of whom may be an other member |
| (4) | The giving of any directions under First-tier rule 45(6) | The Chamber President |

- | | | |
|------|--|--|
| (5) | The giving of any other directions (whether or not at case management review or other hearings) | One First-tier judge |
| (6) | Appeals which are to be determined without a hearing | One First-tier judge |
| (7) | Applications for bail and other bail matters | One First-tier judge |
| (8) | Issue of a witness summons | One First-tier judge |
| (9) | Any determination that an appeal be dismissed as abandoned or finally determined | One First-tier judge |
| (10) | Review under First-tier rule 60(1A) and any resulting action under that paragraph | The Chamber President |
| (11) | Applications for permission to appeal to Upper Tribunal | One First-tier judge, from those approved by the Senior President to deal with such applications |
| (12) | Review under section 9 of the 2007 Act of a decision (consequent on an application for permission to appeal) and any resulting action under that section | One First-tier judge, from those approved by the Senior President to deal with section 9 matters |

2.2 Any of the matters specified in paragraph 2.1(5), (7), (8), or (9) may be decided by the members of the Tribunal deciding an appeal or other matter pursuant to paragraph 2.1(3).

2.3 Any decision that an appeal or other matter is to be decided by more than one member pursuant to paragraph 2.1(3) is that of the Chamber President; but such a decision may be delegated to another First-tier judge.

3 *Where the Tribunal may not accept a notice of appeal*

- 3.1 First-tier rule 9 (where the Tribunal may not accept a notice of appeal) imposes a duty on the Tribunal not to accept an invalid notice of appeal (in the circumstances described in rule 9(1A)) and to serve notice to this effect on the person who gave the notice of appeal and on the respondent.
- 3.2 The Tribunal will scrutinise a notice of appeal as soon as practicable after it has been given. First-tier rule 9 makes no provision for the issue of validity to be determined by means of a hearing or by reference to any representations of the parties.
- 3.3 Once the Tribunal has served the notice described in paragraph 3.1, First-tier rule 9 provides that the Tribunal must take no further action in relation to the notice of appeal. The decision under First-tier rule 9 is, accordingly, a procedural or preliminary decision.
- 3.4 The fact that a hearing date may have been given to the parties does not mean that the appeal must be treated as valid. Accordingly, if at a hearing (including a CMR hearing) it transpires that the notice of appeal does not relate to a decision against which there is, in the circumstances, an exercisable right of appeal, the Tribunal must so find; but it will do so in the form of a determination, rather than by means of a notice under First-tier rule 9.

4 *Review of decision of First-tier Tribunal*

- 4.1 On an application to the First-tier Tribunal for permission to appeal under section 11 of the 2007 Act (right to appeal to Upper Tribunal) on a point of law arising from a decision, the First-tier Tribunal may review that decision pursuant to First-tier rule 26, only if it is satisfied that there was an error of law in that decision.
- 4.2 Following such a review, the First-tier Tribunal may (subject to section 9(10)) set the decision aside under section 9(4)(c) and re-decide the matter concerned under section 9(5)(a). The First-tier Tribunal is, however, likely to adopt this course only if it is satisfied that:-
- (a) the effect of any error of law has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
 - (b) there are highly compelling reasons why the matter should be re-decided by the First-tier Tribunal. (Such reasons are likely to be rare.)
- 4.3 Nothing in this Practice Statement affects the operation of First-tier rule 60 (correction of orders and determinations).

5 ***Record of proceedings***

- 5.1 The Tribunal shall keep a record of proceedings of any hearing and attach that record to the Tribunal's case file.

PART 3

**PRACTICE STATEMENTS FOR THE IMMIGRATION AND ASYLUM
CHAMBER OF THE UPPER TRIBUNAL**

6 ***Composition of Immigration and Asylum Chamber of the
Upper Tribunal***

- 6.1 Subject to paragraph 6.2 to 6.5, any matter that falls to be decided by the Upper Tribunal is to be decided by one Upper Tribunal judge.

- 6.2 Where the Senior President or the Chamber President considers that the matter involves a question of law of special difficulty or an important point of principle or practice, or that it is otherwise appropriate, the matter is to be decided by two or three Upper Tribunal judges.

- 6.3 Where the Senior President or the Chamber President considers that it is appropriate, the matter is to be decided by:-

(a) one Upper Tribunal judge and one other member; or

(b) two Upper Tribunal judges and one other member.

- 6.4 An application for permission to appeal to the Upper Tribunal is to be decided by one Upper Tribunal judge, from those approved by the Senior President or the Chamber President.

- 6.5 Nothing in paragraph 6.2 to 6.4 prevents any procedural or ancillary matter regarding the case concerned from being decided by any Upper Tribunal judge.

- 6.6 Any decision of the Chamber President pursuant to paragraph 6.2 or 6.3 may be delegated by the Chamber President to another Upper Tribunal judge.

7 ***Disposal of appeals in Upper Tribunal***

- 7.1 Where under section 12(1) of the 2007 Act (proceedings on appeal to the Upper Tribunal) the Upper Tribunal finds that the making of the decision concerned involved the making of an error on a point of law, the Upper Tribunal may set aside the decision and, if it does so, must either remit the case to the First-tier Tribunal under section 12(2)(b)(i) or proceed (in

accordance with relevant Practice Directions) to re-make the decision under section 12(2)(b)(ii).

7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-

- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
- (b) there are highly compelling reasons why the decision should not be re-made by the Upper Tribunal. (Such reasons are likely to be rare.)

PART 4

PRACTICE STATEMENTS FOR THE IMMIGRATION AND ASYLUM CHAMBERS OF THE FIRST-TIER TRIBUNAL AND THE UPPER TRIBUNAL

8 *Presiding member*

8.1 Where more than one member of the Tribunal is to decide a matter, the presiding member for the purposes of article 7 of the 2008 Order and this Practice Statement is:-

- (a) the judge; or
- (b) the senior judge, where the Tribunal contains more than one judge.

9 *Transfer of proceedings*

9.1 Where:-

- (a) the Tribunal ("the original Tribunal") has started to hear an appeal but has not completed the hearing or given its determination; and
- (b) the Chamber President decides that it is not practicable for the original Tribunal to complete the hearing or give its determination without undue delay,

the Chamber President may direct the appeal to be heard by a differently constituted Tribunal ("the new Tribunal").

- 9.2 Where an appeal has been transferred under paragraph 9.1:-
- (a) any documents sent to or given by the original Tribunal shall be deemed to have been sent to or given by the new Tribunal; and
 - (b) the new Tribunal will deal with the appeal as if it had been commenced before it.
- 9.3 Without prejudice to paragraph 9.1, the Chamber President may transfer proceedings in the circumstances described in Practice Direction 3 (procedure on appeal); and paragraph 9.2(a) shall apply in the case of such a transfer as it applies in the case of a transfer under paragraph 9.1.

10 *Format etc of determinations*

- 10.1 In order to ensure consistency in the formatting of determinations, every determination of the Tribunal must:-
- (a) state in the heading whether the appeal is being determined following a hearing or without a hearing;
 - (b) be laid out in sequentially numbered paragraphs; and
 - (c) be signed and dated at its end or employ such electronic or other methods as the Senior President or the Chamber President may approve for signifying that the determination is finalised.
- 10.2 Since Article 8 of the 2008 Order provides that the decision of the majority is the decision of the Tribunal (and that the presiding member has a casting vote), where the jurisdiction of the Tribunal is exercised by more than one member the resulting determination or other decision will not express any dissenting view or indicate that it is that of a majority.

11 *Reporting of determinations*

- 11.1 This Practice Statement is to be read in conjunction with Practice Direction 11 (citation of unreported determinations) and Practice Statement – *Form of decisions and neutral citation First-tier Tribunal and Upper Tribunal on or after 3 November 2008* (31 October 2008).
- 11.2 The decision whether to report a determination is that of the Tribunal and it is not perceived to be an issue in which the parties to the appeal have an interest.
- 11.3 A determination is reportable only if it follows a hearing or other consideration where the jurisdiction of the Tribunal was exercised by the Senior President, the Chamber President or an Upper Tribunal judge (whether or not sitting alone and, in the case of an Upper Tribunal judge, whether sitting as such or as a First-tier judge).

- 11.4 A determination which is reportable but not in fact reported will be anonymised (where appropriate), treated as an unreported determination for the purposes of the Tribunal's website and entered as such on that website.
- 11.5 Determinations not falling within paragraph 11.3 are unreportable. They will be sent to the parties (in accordance with the relevant Procedure Rules) but will not be published or archived in publicly accessible form.
- 11.6 The Tribunal's website is the only official source of the determinations of the Tribunal.
- 11.7 In this Practice Statement:-
- “determination” includes any decision of the Tribunal; and
- “Upper Tribunal judge” does not include a deputy judge of the Upper Tribunal.

**LORD JUSTICE CARNWATH
SENIOR PRESIDENT OF TRIBUNALS**

10 February 2010