

# Should an oral or paper hearing be requested

August 2020

Factsheet 4a

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This Factsheet gives guidance on the conditions imposed on the Asylum Support Tribunal (AST) in relation to oral hearings during the Covid-19 period. **It should be read in conjunction with Factsheet 4 – Filing in the Notice of Appeal during the Covid-19 period and ASAP's Briefing note – Asylum Support Tribunal Procedures during the Covid-19 pandemic**

### Our telephone advice line:

If you still have questions or need further information and advice *after* reading this factsheet, please contact our advice line on 020 3716 0283. It is open Mondays, Wednesdays and Fridays from 2pm to 4pm. Please note this is a 'second-tier' advice line. This means that we can give advice to other advice workers but not to individual clients.

### Changes to AST procedure during Covid-19

The most significant change to procedure is that the AST now determines a significant number of appeals without holding a hearing<sup>1</sup>.

It is therefore necessary to consider whether you need to request an oral hearing and to understand the criteria the AST will use in considering your request.

Prior to lockdown, most appeals were oral hearings. Under rule 27<sup>2</sup>, if an appellant requested an oral hearing, they would be granted one. Even in cases where an appellant requested a paper hearing, if a judge considered oral evidence was necessary, an oral hearing would be listed instead. To request one, the appellant or their representative only needed to indicate their preference in Section 4 of the [Notice of Appeal form](#).

### The Pilot Practice Direction and Rule change

On 19/03/20 the President of Tribunals published a Pilot Practice Direction<sup>3</sup> in response to the pandemic which removed the right of appellants to an oral hearing.

<sup>1</sup> A hearing is defined at Tribunal Procedure Rules 2008 Rule 1 as meaning an oral hearing and includes a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication. Tribunal Procedure (First-Tier Tribunal) (Social Entitlement Chamber) Rules 2008 SI no 2685 (amended 2013)

<sup>2</sup> Rule 27 Tribunal Procedure Rules 2008

<sup>3</sup> <https://www.judiciary.uk/wp-content/uploads/2020/03/General-Pilot-Practice-Direction-Final-For-Publication-CORRECTED-23032020-1.pdf>

The information contained in this Factsheet is intended for guidance only. While every effort is made to ensure it is correct a time of publication, it should not be used as a substitute for legal advice. For client specific advice please contact ASAP.

The decision to hold a paper appeal must be in accordance with the overriding objective<sup>4</sup>, the parties ECHR rights and the Tribunal Procedure Rules.

On 10/4/20 the Rules were amended inserting a new rule, 5A which provides that the AST may make a decision without holding a hearing **if all the following conditions are met:-**

- (a) the matter is urgent;
- (b) it is not reasonably practicable for there to be a hearing (including a hearing where the proceedings would be conducted wholly or partly as video proceedings or audio proceedings);
- (c) it is in the interests of justice to do so.

The decision whether to hold a paper appeal or oral hearing is made by a judge, whether at the initial listing stage, the Directions stage or after an application by the appellant. If a request for an oral hearing is refused it remains open to the judge determining the paper appeal to decide at that stage that an oral hearing is needed.

### When an oral hearing may be necessary

Oral hearings provide an opportunity for an appellant and/or their representative to explain and clarify aspects of the appellant's case. This will be in response to questions put to them by their representative, the HO's representative and the judge. The judge then makes findings of fact based on the evidence presented. Oral hearings allow the evidence to be tested. The table below gives reasons why an oral hearing will usually be necessary.

In a paper appeal, the judge makes their decision based on the written evidence submitted in advance of the appeal. It may be appropriate to request a paper appeal where the legal and factual issues are narrow, and the appellant can provide adequate documentary evidence to support their case. And therefore there is no need for the appellant to supplement the written information and evidence with oral evidence.

### Grounds for requesting an oral hearing

The following grounds **must be treated as guidelines only** and adapted to reflect an appellant's individual circumstances.

Conditions required for a paper appeal – Rule 5	Grounds for requesting an oral hearing
(a) the matter is urgent;	Explain why the matter is <u>not</u> urgent.  E.g. the appellant is being accommodated in

<sup>4</sup> The overriding objective of the Tribunal Rules is to enable the Tribunal to deal with cases fairly and justly. See Rule 2 Tribunal Procedure Rules 2008, which is set out below.

	<p>Initial Accommodation (IA) and the HO are not evicting residents during the pandemic. Neither the appellant nor the HO will be prejudiced by any delay in making arrangements for an oral hearing.</p> <p>Alternatively the appellant is not in IA, but would prefer to risk waiting longer for their appeal, in order for it to be oral.</p>
<p>(b) it is not reasonably practicable for there to be a hearing (including a hearing where the proceedings would be conducted wholly or partly as video proceedings or audio proceedings);</p>	<p>Make clear that it <u>is</u> reasonably practicable for the appellant to attend an oral hearing.</p> <p>For e.g. they have access to a mobile phone and could be dialled into an oral hearing at a date and time set by the AST.</p>
<p>(c) it is in the interests of justice to do so [dispose of proceedings without a hearing]</p>	<p>Give reasons why it would <u>not</u> be in the interests of justice to proceed with the appeal on the papers and why an oral hearing is therefore necessary.</p> <p>For e.g.</p> <p>The appellant has had or is likely to face practical difficulties in gathering the evidence requested (e.g. evidence of bank accounts held abroad).</p> <p>Their credibility is in question. E.g. the HO has indicated that it does not believe aspects of the applicant's case or there is contradictory evidence, such as between the information in the visa application and the ASF1, or between the ASF1 and an Experian check.</p> <p>The issues in the case are not clear cut i.e. it is not obvious which issues the judge may consider significant.</p> <p>The appellant is unable to provide sufficient documentary evidence. E.g. the steps they have taken to obtain a letter of support from a friend or relative and they need to explain this in person.</p> <p>The appellant has vulnerabilities which may affect their entitlement to support and/or their ability to engage with proceedings, which cannot be</p>

	<p>adequately expressed on the papers.</p> <p>The case is legally and/or factually complex for another reason(s). E.g. the appellant has had a previous appeal dismissed by the AST.</p>
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Rule 2 states that:

*2.—(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.*

*(2) Dealing with a case fairly and justly includes—*

*(a) 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;*

*(b) avoiding unnecessary formality and seeking flexibility in the proceedings;*

*(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;*

*(d) using any special expertise of the Tribunal effectively; and*

*(e) avoiding delay, so far as compatible with proper consideration of the issues*

Therefore relevant grounds for requesting an oral hearing may include that:

- the appellant has no or limited English
- they have no or limited ability to submit written arguments
- they have no representative (see Factsheet 4 Section 5)
- the issues in the case are legally or factually complex
- the appellant has a particular vulnerability that would hinder their ability to participate fully in a paper appeal

### When should you apply for an oral hearing?

There is no formal application process for requesting an oral hearing. You will need to take the following steps depending on at which stage you are assisting your client. If you have followed steps 1 and 2 successfully then step 3 will not be necessary.

#### Step 1

Tick 'yes' to an oral hearing in Section 4 of the Notice of Appeal. Then tick 'yes' to the appellant attending the hearing.

#### Step 2

Give reasons why an oral hearing is necessary, with reference to the grounds above, in Section 6 of the Notice of Appeal. Once the appeal has been listed you will be sent the Directions Notice notifying you (and your client) which form the hearing will take<sup>5</sup>.

<sup>5</sup> In order to receive correspondence from the AST you must include your contact details in Section 5 of the Notice of Appeal. For more information refer to Factsheet 4.

### Step 3

E.g. 1 – if on receipt of the Directions Notice the AST has directed a paper hearing, you will need to make a further application for an oral hearing. If the judge has given reasons for refusing to grant an oral hearing, you must address these. In these circumstances we strongly advise you contact us for advice.

E.g. 2 – if you are assisting with an appeal after it has been listed i.e. at the directions stage and/or a request for an oral hearing has not yet been made, then you will need to make a separate application using the grounds above.

In both cases, the application should be sent to the AST at the earliest opportunity by email<sup>6</sup>, headed with the appellant's name and five digit appeal reference number. Mark the application for the urgent attention of the Duty Judge.

If you are unsure about how or when to request an oral hearing please call our advice line.

### AST's information to appellants

ASAP will update this Factsheet when there are changes to procedure and guidance. However, you **must** also check the AST's own guidance on remote appeals before lodging an appeal. It is available on the Judiciary website (rather than the AST's website) and is not easy to find. Follow the link and scroll down to Social Entitlement Chamber <https://www.judiciary.uk/coronavirus-covid-19-advice-and-guidance/#differentchambers>

You will find links to the two guidance documents below:

1. [31 March 2020: Social Entitlement Chamber \(First-Tier Tribunal\): Asylum Support: Arrangements During the COVID-19 Pandemic](#)
2. [31 March 2020: Social Entitlement Chamber \(First-Tier Tribunal\): Asylum Support: Help for Users](#)

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<sup>6</sup> [asylumsupporttribunals@justice.gov.uk](mailto:asylumsupporttribunals@justice.gov.uk)