

Filling in the Notice of Appeal

30th July 2021

Factsheet 4

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This Factsheet gives guidance on filling in the Notice of Appeal for clients who want to appeal decisions to refuse or discontinue asylum support.

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.

What is the Notice of Appeal?

In order to appeal against a decision by the Home Office (HO) to refuse or discontinue asylum support (i.e. s95 or s4 support) you must complete a Notice of Appeal. A copy of the Notice of Appeal will be sent with the HO decision letter refusing or discontinuing support. It can also be downloaded from the Asylum Support Tribunal (AST) website¹. It must be completed in full and in English². Failure to do so can result in the appeal being considered invalid. It is not a requirement of the Tribunal Rules that an appeal be lodged using the Notice of Appeal. However, the Tribunal Procedure Rules 2008 r22 requires certain information to be included for an appeal to be valid³. The Notice of Appeal comprises all the information that is required.

The new Notice of Appeal June 2021

The new Notice of Appeal form reflects the recent changes to the type of appeals being offered at the AST; namely, in person, remote oral hearings and paper determinations. In July 2021 the AST began to list in person appeal hearings at Import Building in London, for those able to attend, for the first time since April 2020. The AST continues to offer remote hearings which take place over the phone or by online video conference called CVP.⁴ The AST user guide states that the AST will try to offer an appellant their choice of hearing type, but that this may not

The information

¹<https://www.gov.uk/government/publications/form-t200-notice-of-appeal-form-ao9>

² Rule 23 Tribunal Procedure (First-Tier Tribunal) (Social Entitlement Chamber) Rules 2008 SI No 2685 (amended 2013)

³ Rule 24 Tribunal Procedure Rules 2008

⁴ There is no longer an option of having a video-link appeal, where the appellant would attend a local court and use the court's video-conferencing facilities to communicate with the Judge at the AST in London. Appellants must have access to the appropriate equipment in order to avail of the new CVP video appeals.

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.

always be possible.⁵

It is possible to request an appeal to be determined on the papers, but it will rarely be appropriate to do so and will generally be preferable and beneficial for your client to be able to participate in a hearing where they have the opportunity to give oral evidence. The AST may also decide to determine appeals on the papers in certain limited circumstances for example if the Judge thinks that this is fair, that the appeal is urgent and that it is not possible to arrange a hearing. Under r8 of the Tribunal rules a case can be dismissed without a hearing for specific reasons, including where there is no jurisdiction or where the judge believes there is no reasonable prospect of the case succeeding.

If after reading this factsheet you need advice on the Notice of Appeal form, please call our advice line.

More information about the appeals process is available on the [Asylum Support Tribunal website](#).

Filling in the Notice of Appeal

Section 1

This section of the form asks for the appellant's personal details and HO support reference number. Failure to include the HO support reference number can result in the Notice of Appeal being considered invalid.

If the person appealing has a disability and/or additional needs that the AST (and therefore the judge dealing with their case) should be aware of, details should be provided in this section. The AST user guide states that will try to arrange all appellants preferred type of hearing but that this may not always be possible. If your client has a disability that means that they cannot travel to London then you should indicate as appropriate in section one. However, we understand that it is **not** the case that an appellant can only request a telephone or video hearing if they have a disability.

Section 2

It is essential to provide a working phone number for the appellant. With reference to guidance note 1, if the appellant requests a telephone hearing they must make sure that their phone does not block 0800 or withheld numbers.

The address provided in this section should be one where the appellant can receive post and if required their travel tickets to London.

We strongly advise that the appellant also provides an email address, provided they

⁵ <https://www.judiciary.uk/wp-content/uploads/2021/05/Help-for-Users-Guide-.pdf>

have access to one. If the appellant has requested a Video CVP hearing, the joining instructions will be emailed to the address listed in section 2. Furthermore, if they can only receive documents by post, there is a possibility they will not receive essential information about their appeal and may miss deadlines for submitting evidence.

The HO will send the appeal bundle⁶ to the appellant by email if an email address is provided⁷. It is essential that the appellant's representative provides their own email address in Section 5 as this means the AST will send them documents relating to the appeal. They can then notify the appellant of the hearing date and any requests for information (see Section 5 below). The representative will also receive a copy of the appeal bundle from the HO by email.

If the appellant has neither a reliable address nor an email address then the address in Section 2 could be a care of address which could be their representative's address.

If the appellant provides an email address in this section the AST will correspond with them by email only.

In a remote hearing (video or telephone), it is essential the appellant has a copy of the HO appeal bundle to refer to during the hearing⁸. They will be asked questions about the documents and written explanations they have provided. The appeal bundle should be received by the appellant and their representative within three days of the AST receiving the Notice of Appeal⁹. If it has not been received, the appropriate HO team dealing with the appeal should be chased. This will either be: AsylumSupportS95Appeals@homeoffice.gov.uk **or** Section4nationalteamappeals@homeoffice.gov.uk

Section 3

In this section the appellant is asked to provide the date of the HO decision letter against which they are appealing. A copy of this letter must be sent with the Notice of Appeal. Again, failure to comply with this request will result in the Notice of Appeal being sent back to the appellant.

In very limited circumstances, the AST will accept an appeal as valid without seeing a copy of the decision letter. E.g. if the appellant has been given an eviction notice by their accommodation provider but has not yet received the HO decision letter. In

⁶ The appeal bundle includes the appellant's immigration and support chronology, the HO response to points raised in the Notice of Appeal, a copy of the ASF1 and supporting evidence, and anything else on which the HO has based its decision e.g. the appellant's visa application or Experian report.

⁷ According to the HO, the s4 team will send bundles by email as standard but in a same email will ask if a hard copy is required and will send a hard copy if its affirmative. The s95 team states that both an emailed and hard copy are despatched.

⁸ In some circumstances the judge may direct the court appointed interpreter to translate relevant pages during the hearing.

⁹ Rule 24 Tribunal Procedure Rules 2008

these circumstances, use Section 6 to outline the steps taken by the appellant to obtain the decision letter and include a copy of the eviction letter with the Notice of Appeal.

Section 4A

Section 4A and 4B deal with the type of hearing requested by the appellant. In section 4A the appellant is asked to indicate if they would like an oral hearing or if they would prefer their appeal to be determined on the papers.

In a paper appeal the judge will make a decision based on the written evidence submitted in advance of the appeal. In an oral hearing, the appellant and their representative (if they have one) will set out their case before the judge.

ASAP's position is that it is nearly always in your **client's best interests to be able to participate in an oral hearing**. 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. In a paper appeal, the judge makes their decision based on the written evidence submitted in advance of the appeal. **It will rarely ever be appropriate to request a paper determination on the Notice of Appeal**. At this stage, you will not have access to the HO bundle or their written submissions, without which it is difficult to assess if you have sufficient documentary evidence to win the appeal. Requesting a paper determination on the Notice of Appeal may be detrimental to your client, as this will be taken as consent to a paper determination. Ticking the paper determination box on the Notice of Appeal will make it harder to request an oral hearing later in the appeal process.

Need for Interpreter

If the appellant requires an interpreter they should request one here. As oral hearings can be both complex and lengthy it is advisable to request an interpreter unless the appellant is fluent in English. This service is free of charge and interpreters arranged by the AST are independent of the HO and the AST.

Section 4B

This section asks the appellant to indicate **all** of the types of oral hearing that they can attend. There are three types of oral hearing:

1. Telephone hearing. The majority of oral hearings since April 2020 have been telephone hearings. The appellant needs a charged telephone and a quiet space to take the call from the Judge. The HO presenting officer and the ASAP representative (if ASAP are representing) will also be on the call.
2. Video CVP hearing. The hearing takes place by video conference. The

appellant needs access to a PC or device with a good broadband connection. The joining instructions will be emailed to the email address listed in section 2. The HO presenting officer and ASAP representative (if ASAP are representing) will also be on the video call.

3. In person hearing. The appeal will be heard in a hearing room at the AST in Import Building. The appellant will need to be able to travel to London by public transport. The tickets will be provided by the HO. The Judge will be present in the hearing room. The HO presenting officer and the ASAP representative (if ASAP are representing) may be present in the room or may join the hearing by telephone.

Section 5

Section 5 asks if the appellant is represented in the appeal. If you are an adviser, and your organisation is able to continue to advise the appellant about the appeal, you should include your details here. You will then receive information about the appeal, including the date and time of any hearing and the Directions Notice¹⁰. You will be able to support the appellant to respond to directions and prepare for the appeal. By ticking this box, you are ***not*** informing the AST that you will be representing in the actual hearing.

The form asks if you can go to your representative's office for a CVP hearing. If you plan to help facilitate your client with a video CVP hearing in your office you should tick the 'yes' box. Again, this does not mean that you are informing the AST that you will be representing in the hearing, just that you will be facilitating the hearing by giving your client access to a quiet space and appropriate equipment.

The form then asks whether the representative will be attending the hearing. If you are an adviser and are not attending the hearing it is important to tick the 'No' box. The appellant can then access free legal representation available from ASAP.

ASAP provides free advice and representation to appellants in relation to their asylum support appeal. Depending on capacity one of our duty scheme advocates may be able to represent the appellant in their telephone or paper appeal. If an appellant wishes to be represented by ASAP, they or their representative should [make a referral to ASAP](#) as soon as possible in advance of the hearing. We cannot guarantee that we will be able to assist everyone who is referred to us, but an early referral will help us to prioritise that person's case.

Section 6

In Section 6 the appellant must state their reasons for appealing and explain which points in the HO decision letter they disagree with. There will be time to provide further evidence later in response to the Directions Notice, **so do not delay**

¹⁰ The AST will send a 'Directions Notice' to the appellant, their representative and the Home Office directing parties to provide further explanations and/or evidence to support their case.

appealing to gather more evidence because you may miss the deadline. If the appeal is late, the appellant must explain why it is late and why the AST should accept it. Any supporting documentation, e.g. a letter from the appellant’s adviser giving reasons why the appellant was unable to meet the deadline should be sent. If a reasonable explanation is provided the AST will usually accept an out of time appeal.

Examples of Grounds for Appeal

The following table provides examples of when the HO might refuse or discontinue support and the types of grounds that could be included in an appeal. This is **general guidance only**. The grounds of appeal will differ from case to case. If you have any doubts about how to phrase the grounds of appeal, call ASAP’s advice line.

Reason for refusing or discontinuing support	Grounds for Appeal
The applicant is not destitute	Provide an explanation (with corroborating evidence) of how the appellant has been supporting herself/himself. E.g. letters from friends or charities confirming the type of support provided, the length of time it was provided for and the date that support will come to an end.
Refusal of s4 support on the grounds that the person does not meet any of the criteria for support (see Factsheet 2 for more details and	<p>If they are unable to travel then include medical evidence which confirms this and explains why (e.g. s4 Medical Declaration).</p> <p>If the appellant is about to submit a PAP or Judicial Review claim against the refusal of further submissions, then provide a copy and proof it was submitted.</p> <p>If the appellant is preparing to submit a fresh claim, a draft copy of the fresh claim, confirmation that legal aid has been granted/applied for, evidence of upcoming FSU appointment and a submission from their immigration solicitor detailing the merits of the fresh claim and what is different/new from what has previously been considered.</p> <p>If they have been taking ‘all reasonable</p>

	steps' i.e. attempted to get a travel document or approached the HO regarding assistance to return voluntarily to their country of origin then this information should be included, together with supporting evidence of attempts to contact the HO or the relevant embassy.
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Sending the form to the Tribunal:

Although, appeals can still be made by post, the AST user guide strongly recommends the use of email for submitting an appeal and communicating with the AST.

The AST has confirmed it will accept scans and photographs of the Notice of Appeal and supporting evidence, which may assist appellants who are unable to access face to face support from advice agencies.

Wherever possible the Notice of Appeal should be completed electronically and sent by email to:

asylumsupporttribunals@justice.gov.uk

The tribunal can be contacted using the freephone number provided on the Notice of Appeal: 0800 681 6509.