

# Filling in the Notice of Appeal during the covid-19 period

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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. It should be read in conjunction with ASAP's Factsheet 4a – Should an oral or paper hearing be requested**

**This factsheet has been updated to take into account changes to the appeals process in response to COVID-19. References to the Notice of Appeal are to the current version of the form published in May 2020.**

## 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<sup>1</sup>. 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) website<sup>2</sup>. It must be completed in full and in English<sup>3</sup>. 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 valid<sup>4</sup>. The Notice of Appeal comprises all the information that is required.

<sup>1</sup> The form was updated in May 2020 to take into account changes to the tribunal rules which allow for appeals to be heard remotely due to the restrictions in place during the covid-19 pandemic.

<sup>2</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/885850/t200-eng.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/885850/t200-eng.pdf)

<sup>3</sup> Rule 23 Tribunal Procedure (First-Tier Tribunal) (Social Entitlement Chamber) Rules 2008 SI No 2685 (amended 2013)

<sup>4</sup> Rule 24 Tribunal Procedure Rules 2008

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 new Notice of Appeal May 2020

The new form has been designed so that it can continue to be used post-covid, when there is a return to face to face hearings. It refers to video and face to face hearings, which are not currently happening. At present the only form of oral hearing is a telephone one<sup>5</sup>. The most significant changes to the previous version are the option to request a telephone hearing and for appellants to provide an email address for correspondence. Email addresses are particularly important as staff are working remotely and there is no guarantee post will reach the AST in time. Appeals are either being heard as paper appeals or telephone hearings (see Section 4). Video-link hearings which were available in limited circumstances prior to lockdown are currently unavailable.

The guidance notes attached to the Notice of Appeal are brief and also refer to video and face to face hearings. More detailed information about the arrangements for remote appeals are communicated to appellants and their representatives via the Notice of Hearing and tribunal judges' Directions Notice. If after reading Factsheet 4a you are still unsure about which type of hearing to choose, please call our advice line.

More information about the appeals process is available on the [Asylum Support Tribunal website](#), although at the time of writing it has not been updated and still refers to travelling to London for a face to face hearing.

## Filling in the Notice of Appeal

### Section 1

This section of the form asks for the appellant's personal details and HO reference number. Failure to include the HO 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. Despite the way in which this section is worded, it is **not** the case that an appellant can only request a telephone hearing if they have a disability or exceptional needs (see Section 4 below).

Video-link hearings are not currently available and were only used in lieu of face to face hearings under very limited circumstances, for example when the person would have had difficulty travelling because of physical or mental health problems, or pregnancy.

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<sup>5</sup> According to the AST's '[Road Map to Recovery](#)' dated 11/6/20 special arrangements will be made to facilitate a face to face hearing in very exceptional circumstances. To date no face to face hearings have taken place since w/c 23/3/20. At the time of writing this document has not been published but is available on ASAP's website.

## Section 2

It is essential to provide a working phone number for the appellant. With reference to guidance note 3, if the appellant requests an oral 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. We strongly advise that the appellant also provides an email address, provided they have access to one. Under the current circumstances 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 bundle<sup>6</sup> to the appellant by post. 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 telephone hearing, it is essential the appellant has a copy of the HO appeal bundle to refer to during the hearing<sup>7</sup>. 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 Appeal<sup>8</sup>. 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](mailto:AsylumSupportS95Appeals@homeoffice.gov.uk) **or**  
[Section4nationalteamappeals@homeoffice.gov.uk](mailto: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.

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<sup>6</sup> 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.

<sup>7</sup> In some circumstances the judge may direct the court appointed interpreter to translate relevant pages during the hearing.

<sup>8</sup> Rule 24 Tribunal Procedure Rules 2008

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 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 4

This section deals with the type of hearing requested by the appellant. The two options currently are paper appeals and telephone hearings. In a paper appeal the judge will make a decision based on the written evidence submitted in advance of the appeal. The appellant will not be required to attend a hearing. In an oral hearing, the appellant and their representative (if they have one) will set out their case before the judge.

The most significant change to AST procedure during Covid-19 is that the AST now determines a significant number of appeals without holding a hearing. It is no longer sufficient to tick yes to an oral hearing on the Notice of Appeal. You must also give reasons as to why an oral hearing is necessary. **It is therefore essential that you understand the criteria the AST will use to assess your request. Refer to Factsheet 4a for guidance on how and when to request an oral hearing.**

The final option in Section 4 is for the appellant to request an oral hearing, but not attend it. In the current circumstances, where all oral hearings are telephone hearings, this is not a viable option. Therefore, tick yes to the appellant attending the hearing.

#### 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 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 Notice<sup>9</sup>. 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.

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<sup>9</sup> 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.

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 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 Factsheet 20 for potential arguments for eligibility for s4 because of covid-19 only reasons)	If they are unable to travel then include medical evidence which confirms this and explains why (e.g. s4 Medical Declaration).  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.

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.

If they have been taking 'all reasonable 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.

### **Sending the form to the Tribunal:**

Guidance notes 7 and 8 explain the ways in which the AST can be contacted. Although the postal address is still included here, the majority of staff are still working remotely and submitting documents by post should be used as a last resort.

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](mailto:asylumsupporttribunals@justice.gov.uk)

The tribunal can be contacted using the freephone number provided on the Notice of Appeal: **0808 801 0503**.