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ASYLUM AID
protection from persecution
PART OF THE HELEN BAMBER GROUP

The new Independent Appeals Body: Call for evidence Response

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INTRODUCTION

Asylum Aid provides legal advice and representation to some of the most vulnerable people seeking asylum. We have built an expert service, delivering vital and life-saving services in some of the most complex legal cases, with a particular specialty working with survivors of trafficking, torture or other forms of human cruelty, unaccompanied minors and stateless people.

Asylum Aid is regulated by the Immigration Advice Authority (IAA) at Level 3 in asylum and protection, as well as in immigration. Our casework service is provided by IAA registered advisers and solicitors regulated by the Solicitors Regulation Authority. All caseworkers are accredited under the Law Society's Immigration and Asylum Accreditation Scheme, and we hold the Lexcel quality mark.

Since August 2020, Asylum Aid has been part of the Helen Bamber Foundation Group. Asylum Aid operates as an independent charity, led by its own Executive Director within the group structure, and is ambitious about growing its impact and reach in the future to ensure protection from persecution for those who need it. The Helen Bamber Foundation is a pioneering Human Rights charity supporting refugees and asylum seekers who are the survivors of trafficking, torture, including gender-based and 'honour-based' violence.

Asylum Aid's vision is that all those who come to the UK in need of protection from persecution and other forms of human cruelty obtain it and are treated fairly and with dignity. We work towards this vision through three main strands of work: the provision of specialist legal representation through the asylum and statelessness determination process; the establishment of

partnerships to build capacity and increase expertise in the wider immigration advice sector; and drawing on our experience and expertise built up through our casework to engage in policy, advocacy and strategic legal work to make the asylum system fair and dignified, and to improve access to effective and quality legal advice for those seeking protection.

CALL FOR EVIDENCE QUESTIONS AND OUR RESPONSES

Initial questions

Question 1 Are you responding as an individual or on behalf of an organisation?

b) On behalf of an organisation.

Question 2 Which of the following best describes your position or organisation?

b) Legal aid provider / legal aid representative

Question 3 Please provide the name of the organisation you work for.

Asylum Aid

Question 4 What is your geographical location?

England

Access to justice, fairness and procedural safeguards

Question 5 How can the new Independent Appeals Body ensure parties to the appeal have fair access to legal or immigration advice, representation and the practical support required to participate effectively in the process?

Effective participation in a legal process requires timely access to legal advice and representation. Under the Immigration and Asylum Act 1999, it is a criminal offence to give immigration legal advice unless the adviser is either regulated by the Immigration Advice Authority ("IAA") or exempt by reason of qualifications such as a barrister, solicitor or legal executive.

It is unclear what role the Independent Appeals Body ("IAB") would play in terms of making arrangements for the provision of civil legal services. Access to legal advice and representation is severely limited by the availability and capacity of the legal aid sector. This problem is affecting all stages of the immigration and asylum determination process, including appeals. It is considerably

more difficult for the tribunal to work with an appellant who is unrepresented than it is to deal with an appropriately qualified and experienced lawyer.

To ensure that appellants have fair access to legal advice and representation, the government must first deal with the crisis in legal aid, including increasing rates, reverting to hourly rates, improving the bureaucracy around legal aid contracts, audits and billing, and reviewing the scope of matters that currently fall outside of legal aid to reduce the administrative burden. Unless and until these systemic issues are properly addressed, the IAB will face the same problems with appellants' access to legal advice and representation as the existing First-tier Tribunal (F-tT) does.

In the absence of information about what work will be needed in the new IAB system, it is particularly necessary to ensure that provision of legal advice and representation is economically viable. This can only be achieved by hourly rates being set for appeals to be determined in the new IAB, if it goes ahead. Legal Aid rates should be reviewed to a realistic level and then it should be a legal requirement that the rates be reviewed every year to ensure they keep pace with inflation and continue to be fair remuneration. The failure to increase rates over a period of 30 years is a disastrous failing with far-reaching adverse effects on the whole legal advice landscape.

Additionally, if the IAB were to become involved with supplying or arranging legal advice and representation for appellants, it would damage its standing and perceived independence and indeed the standing and independence of those lawyers providing advice at the IAB's request or direction.

Question 6 Can you tell us of your experience of immigration and legal advice, including whether you have concerns around access, availability or capacity.

At Asylum Aid, we deliver legal advice and representation to some of the most vulnerable people seeking asylum in the UK. We see first-hand that access to legal aid for our client group is severely limited by the capacity of the legal aid sector. There is virtually no legal provision at all outside the main metropolitan areas. It is extremely difficult for people to find their own legal aid lawyer. We regularly receive a high number of referrals both from individuals and third parties such as NGOs. Of these, we can accept only very few referrals due to both complexity of cases that come to us and our internal capacity.

We have serious concerns about access to legal advice and representation at all stages of the determination process. There remain 'legal aid deserts' where no publicly funded advice service is available. According to a Law Society 'advice desert' map, 63% of the population in England and Wales have no access to a local immigration and asylum aid provider. In her report 'No Access to Justice 2', Dr Jo Wilding of the University of Sussex sets out a detailed analysis of the crisis in immigration and asylum legal aid, and low cost advice provision.

Last year's increase to civil legal aid funding in an attempt to increase capacity was the first increase since 1996. It is too early to say whether this fee increase is able to incentive new

providers to move into immigration and asylum work, or current providers to invest in increasing capacity. High administrative demands of obtaining and running a legal aid contract pose as a further significant deterrent to increasing capacity within the sector. As stated in response to Q5 above, improving the bureaucracy around legal aid contracts, audits and billing is necessary to attract new providers to start civil legal aid work for immigration and retain existing ones.

Long delays in the immigration and asylum determination process, including at the appeal stage, pose an additional barrier to access to justice. With the Home Office refusing over half the asylum claims that are made, the capacity of the F-tT to hear and determine appeals is extremely stretched. According to the "Tribunal Statistics Quarterly: October to December 2025", published on 12 March 2026, the F-tT receipts increased by 48% (to 32,000) compared to the same period the previous year, predominantly driven by increases in EEA Free Movement and Asylum/Protection/Revocation of Protection (118% and 45% respectively). The National Audit Office published "An analysis of the asylum system" report on 10 December 2025, which found that "[d]ecision quality remains a challenge, with 42% of sampled decisions in a rolling twelve months to May 2025 having significant or fail errors". There is a clear nexus between Home Office's decision-making, contributing to delays in the processing of applications, and access to justice.

Question 7 Do you consider changes are required to ensure early legal advice is a core part of the system to avoid delays and late claims, and to lead to better decisions? Please include any suggestions on how legal advice or representation could be improved.

Yes. Timely access to properly funded legal advice and representation is the way to ensure that cases are prepared and presented appropriately as early as possible, which can reduce, even obviate, the need to access the appeals or judicial review systems. At Asylum Aid, we see first-hand that frontloading cases at the earliest opportunity is capable of increasing the possibility of swift resolution. This benefits the individual concerned, as well as the public purse. The opposite is also true. There is also an expectation of the Home Office to meaningfully engage with cases, including making properly informed and evidence-based decisions. The parties to the process must play their role to ensure that the process is utilised effectively.

Furthermore, to help with quality of legal advice, the Ministry of Justice ("MoJ") should commit resources to training and supporting accreditation in legally aided immigration practices. This would incentive new providers to move into immigration and asylum work, and current providers to invest in increasing capacity, which would, in turn, lead to an increase in accessibility of timely legal advice and representation.

Similarly, better legal training for Home Office caseworkers and presenting officers would also likely lead to better decisions and quicker response times through the whole appeal process.

Question 8 Drawing on the existing practices, procedural rules or approaches of the FTT-IAC, which do you consider could usefully be included, adapted or avoided in the design and operation of the new Independent Appeals Body. Please include any views on the current approach to publishing determinations.

Asylum Aid opposes the Government's proposal to replace the F-tT with a new IAB in response to the appeals backlog, which the Government portrays as a sign of the current tribunal system being not fit for purpose. This fails to acknowledge the impact the Home Office policy changes and the quality and process of decision-making have had on creating and exacerbating the current appeals backlog.

The quality of Home Office's decision-making has a direct impact on the numbers going to appeal and unless this improves, it is difficult to see how the new IAB is not going to suffer from the same, if not worse, problems as the F-tT. The Home Office maintains a tight grip on the flow of appeals into the appeal system and the F-tT. This is because of the way it manages the timing and flow of its decisions, which in turn may have a real impact on the number of appeals received by the F-tT at the appeals registry. Changeable feasts and famines of decisions cause bunching of appeals to the F-tT, making it more difficult for the F-tT to plan ahead and maintain a steady flow of business.

Instead of proposing to overhaul the current tribunal system, the Government should focus on reforms that address the causes of delay, including improving the quality of initial decisions, investing in legal aid, simplifying the rules around obtaining and running a legal aid contract, and improving efficiency in the F-tT system.

If, despite the advice from the sector to the contrary, the Government decides to proceed with its plan to establish a new IAB, it should ensure that the new body is as closely aligned to the existing tribunal system as possible, including in particular the requirement to "deal with cases fairly and justly". The Government must work closely with the legal sector and other stakeholders to ensure any new practices, rules or approaches are fit for the purpose and minimise disruption.

Question 9 How should the new Independent Appeals Body accommodate specific needs or vulnerabilities, including by providing reasonable adjustments or tailored procedural support, to ensure fairness and accessibility?

As a starting point, Asylum Aid opposes the Government's proposal to replace the F-tT with a new IAB, which we believe there is no need for or evidence provided within the "Call for evidence" document to support that it will work.

By definition, refugees are vulnerable. At Asylum Aid we represent some of the most vulnerable within this group, including children, survivors of gross human rights violations such as human trafficking, exploitation, torture, gender-based violence, stateless people and people lacking mental capacity. Each will have specific needs which must be recognised and accounted for to

ensure their fair access to justice, in particular where appellants are increasingly unrepresented at appeal stage.

If, despite the advice from the sector to the contrary, the Government goes ahead with the IAB, we recommend that there should be easy physical access to IAB premises which should be close to or in places with a substantial migrant population and readily accessible by public transport. Appellants and witnesses should similarly be able to access IAB offices set up with computers, screens etc. and trained staff who know how to operate the IT equipment and have familiarity with the IAB's filing system and remote hearing format and who can assist them.

Competent interpreters need to be available, preferably to be in the same room as the appellant and witnesses. The present arrangements are often far from satisfactory, and too many interpreters evidently have not received adequate training to understand their role, function and duties.

Any Procedural Rules should provide for the use of litigation friends (paid for by the IAB if necessary), intermediaries and MacKenzie friends. They should also enable adjudicators to hold hearings in as informal a manner as they may from time to time consider the circumstances may require.

All adjudicators and relevant IAB staff should from time to time receive appropriate awareness training. The IAB should be ever conscious that any user, not just appellants and witnesses but also lawyers and adjudicators may require reasonable adjustments.

Expert evidence and country information

Question 10 How should expert evidence (including medical, country and technical expertise) be commissioned, quality-assured and used within the appeals process?

Given that any appeal from the new IAB might proceed to the Upper Tribunal ("UT"), any expert evidence should from the outset meet the expectations and legal criteria which the UT will apply. These are well-established and known to practitioners through existing Procedure Rules, Practice Statements and case-law such as *KV (Sri Lanka) v SSHD* [2019] UKSC10, *HA (Sri Lanka) v SSHD* [2022] EWCA Civ.155, *MD (Ivory Coast) v SSHD* [2011] EWCA Civ.989, *MOJ (Return to Mogadishu) CG* [2014] UKUT 442 (IAC) and of course the Country Guidance case system. There is no apparent reason to suggest that these should not also apply to the IAB.

Practitioners are aware of good sources in the public domain of background evidence. To limit the choice of experts to those approved by the IAB or any other particular organisation would be analogous to restricting the engagement of legal representatives beyond the minimum requirements of s.84 Immigration and Asylum Act 1999.

Adjudicators will need to assess the expert evidence (along with all the other evidence) in each case. It would be invidious for any pre-sifting of experts to be made by the administration of the IAB which would be perceived as interfering or limiting the way in which appellants might present their cases. It would likely restrict competition and have an adverse impact on the range and independence of expert evidence, for example in choosing an expert to prepare a report to support an application to the Home Office in the first decision-making phase of an application, well before any appeal.

Question 11 What are your views on requiring parties to rely on a shared set of expert materials?

The Home Office before the F-tT in practice very rarely submits its own commissioned expert evidence and tends to rely on what is available in the public domain. It appears the Home Office obtains its own expert evidence only in high profile cases or in deportation appeals of convicted terrorists which are high-profile or on which the Press has reported. Even so, the Home Office does not always call the expert to give oral evidence.

It is always open to the Home Office to approach an appellant's lawyers or the F-tT to see if the parties can settle an agreed bundle of evidence or an agreed partial bundle, such as medical reports. Often it is only at the hearing that the Home Office will either confirm it does not challenge an expert (most frequently a medical report) or more often will accept an expert report by default because it fails to challenge it in cross-examination or submissions or both. The F-tT's Procedure Rules give the F-tT extensive (more so than under the Civil Procedure Rules) powers to manage appeals and give directions. These include directing the parties to endeavour to agree bundles as specifically provided for in Practice Direction to Civil Procedure Rule 32.

The frequency with which the Home Office appears not to consider or re-act to expert evidence which might be submitted in advance of the hearing limits the opportunity to consider an agreed bundle. The Home Office is not known, even rarely, to make such requests and rarely agrees the Appellant's bundle in whole or in part as mentioned in the preceding paragraph.

We would oppose any proposal to mandate the agreement of bundles or expert reports because such a mandatory requirement would likely increase the time needed before the parties would be ready for a hearing. It would likely cause a material increase in the work for both parties needed before the hearing and past practice would suggest that agreed bundles or expert reports would be the exception. There is nothing in the Policy paper or the Consultation document to suggest the Home Office adopt a different approach to Case Progression. Such a proposal might likely result in a limitation or perceived limitation on the independence of the expert and the appellant's freedom of choice of expert.

Additionally and particularly if there is an mandatory requirement on the parties to endeavour to agree a bundle, there are likely to be issues about whether the parties will need to agree the identity of the expert and the scope and nature of the instructions before the expert is finally

instructed and whether both parties should contribute towards the expert's fees. Parties may consider that all or some of these issues will need to be addressed and documented to evidence compliance with any direction about an agreed bundle.

Adjudicator recruitment, eligibility, impartiality and training

Question 12 What recruitment criteria would best ensure adjudicator independence, impartiality and credibility in the new appeals body?

Although it is not intended to replicate the recruitment requirements of the judiciary, the personal qualities of independence, impartiality and credibility and also integrity and propriety (both not mentioned in the consultation document) will be much the same as is required for the judiciary. The professional adjudicators will be fulfilling much the same function as the judiciary on the basis of access to much the same sort of information and will be required to apply the same or very similar statute and case law. Additionally, the "Civil Service Behaviours" constitute a good basic (but incomplete) suite of criteria.

Separately from those who may individually be appointed, the new IAB as an institution will likely not have the history of credibility which attaches to the judiciary as a whole and will have to demonstrate to its users, practitioners and the public that it is deserving of a credibility standing similar to that enjoyed by the judiciary. The IAB at least initially will be struggling in much the same way as the earlier adjudicators did, against the view that it is not a judicial body.

The history of the appointment of non-legally qualified adjudicators should be noted. Originally many had previously served as District Commissioners and were experienced in dealing with local disputes often arising in a cultural context quite different from their own. Such experience was considered to be a good background for immigration adjudication. Additionally, District Commissioners came with their own professional culture and ethos of duty to serve both the Crown and the local inhabitants. Latterly, very few non-legally qualified adjudicators or judges were appointed, and these were generally law academics.

Similarly, legally qualified judges come with a professional culture which is founded on independence and impartiality as well as a professional duty to the court or tribunal. When the majority of judges/adjudicators have this background then, assuming there is a substantial degree of in-person contact, it is likely that the same professional ethos and culture will be passed on and adopted by the few who come from backgrounds which do not share it.

Adjudicators will need to assert authority over any appeal hearing which will require some experience of the range and types of humanity, an ability to "read the room" and to deal rapidly with unexpected turns of event. All skills which are generally assumed a legal practitioner of some years' standing can demonstrate.

An adjudicator will also need the ability to:

- assimilate a large amount of information in a short time to understand the case for and against the appellant
- be aware of the nature and relevance of trans-cultural issues and willing to learn about them
- set aside any personal bias, pre-conceptions and prejudices
- be an active listener and to 'hold' the hearing room in person or remotely
- isolate the issues arising in an appeal and assess what evidence is relevant to the issues so as to be able to reach a reasoned decision
- express themselves clearly, concisely and accurately using the appropriate legal context when writing decisions.

Question 13 What recruitment qualifications would best ensure adjudicator independence, impartiality and credibility in the new appeals body?

The Call for evidence envisages the appointment of adjudicators from a range of backgrounds and if this is intended, it would be invidious to impose the requirement of some prior academic or professional qualification such as a first degree. A consequence may be that selection for appointment will be more difficult because there will be no minimum bar which can easily be recognised and the personal qualities and life history of each candidate will be even more important because of a lack of a shared professional background. This will make it more difficult for the IAB to create a culture and ethos, and thereafter to establish its standing as an independent body.

A minimum age should be required to ensure that candidates are more likely to have sufficient life experience. It might be set at 35 but certainly not lower than 30.

Question 14 What recruitment safeguards would best ensure adjudicator independence, impartiality and credibility in the new appeals body?

Recruitment safeguards should include checks of:

- criminal/police national computer records (whether or not any conviction is spent)
- civil judgments
- past and present disputes with HM Revenue & Customs
- records of any relevant professional organisation
- personal and/or work references
- any claimed educational qualifications acquired subsequent to age 19 or 20
- present and previous employers for the immediately preceding 5 years
- any changes of name.

Given the nature and function of adjudicators, the IAB is likely to be particularly sensitive if it were to be surprised by any adverse disclosure about an appointed adjudicator. In addition to dealing with the damage to the credibility of the IAB, there might subsequently be an Employment Tribunal case which would take up management time and costs. It is understood that this is always a risk, but with a new body, it is an increased risk.

The process for the appointment of adjudicators will need to be and be seen as independent of the Home Office to preserve the independence of the IAB and the credibility of the IAB and its adjudicators. Assigning the appointment process to the Judicial Appointment Commission (JAC) might be attractive but likely to be counter-productive since the purpose is to create an IAB which is separate from and independent of the judiciary even if the appeals process is through HM Courts and Tribunals Service (HMCTS).

Question 15 Which professional backgrounds or types of experience should be considered particularly valuable for adjudicators within the new appeals body? Why?

Professional backgrounds or types of experience which should be valuable – the consultation paper refers to former police officers, social workers, civil servants, planning inspectors and councilors. Councilors should be EXCLUDED since they are elected politicians, as should be members of any political party, because their presence would damage the general perception of the IAB as independent.

The paper does not mention lawyers of any description at all. Adjudicators will be working in a legal environment and seeking to understand and apply the law which the Court of Appeal has on several occasions described as extraordinarily complex and an attempt made not many years ago to consolidate it appears to have been abandoned, for which the most commonly believed reason is that it has proved too difficult. Lawyers and those who have experience of work in a legal environment should be considered as likely to have relevant experience and skills.

It is difficult to suggest suitable professional backgrounds because the consultation paper does not indicate at what likely comparable civil service, police or military grade it is proposed to appoint adjudicators in the IAB.

Question 16 Which professional backgrounds or types of experience should be considered particularly unsuitable for adjudicators within the new appeals body? Why?

This question is an invitation to expressions of bias, prejudice or pre-conception. The competition for adjudicators should be fair and open, subject to clear criteria, and appointments made on merit and from the widest range of eligible candidates, having regard to the need for the adjudicator body to be diverse. It will be for the candidates to show they meet the relevant criteria, not for the appointing body to state that particular groups will not or are unlikely to meet them.

Question 17 For adjudicators to be professionally trained, what should a training package include to support robust, professional, fair and high-quality decision-making in the new appeals body?

The challenge will be to train non-lawyers to be able to use and work within the existing vast expanse of immigration and asylum law[1], some of which is as technical as any tax statute. Without adequate training, mentoring and quality assurance, it is likely that there will be increased pressure on the UT by way of applications to appeal or for judicial review, driving up the cost to the State of dealing with immigration and asylum appeals and delaying the outcome of the whole process.

The consultation paper refers to adjudicators having access to legal advice and mentoring both of which are likely to be very much in demand but the adjudicators will remain the front-line decision makers and will need to develop their own knowledge and legal expertise. Any initial legal training must be practical rather than academic which suggests it might best be delivered by practicing immigration lawyers. Adjudication skills training might be supplied by experienced fee-paid judges. Deployment of salaried MoJ F-tT personnel might be seen as politically obtuse or sensitive and risk impugning the independence of the judiciary since it will be seen as working for the Home Office, that is the Government. Training should include, in a manner suitable for non-lawyers who will probably be approaching their appointment without any relevant legal knowledge:

- the minimum level must cover the material at the IAA Level 3 in Immigration, and Asylum and Protection
- the Bangalore Principles and judicial ethics. These should be applicable to the IAB
- the nature, function and use of background evidence and trans-cultural issues
- hearing room procedures (in-person and remote)
- the role and use of AI
- preparing, drafting and writing decisions.

In the absence of appointees having passed any relevant professional exams, it may be necessary to institute an assessment process as part of onboarding. Crucially, there will need to continue being regular in-service training in the law. There is little reason to anticipate the frequency of new legislation, statutory and delegated, will reduce. It is likely that there will be a need for regular judgecraft training for non-lawyers, more frequently in the early months after appointment.

It is unlikely the role of "Justices' Clerks" could be replicated in the IAB because the adjudicators will have to write their decisions. There is no reason to anticipate that the right of appeal will not be exercised as frequently in the IAB as it is in the F-tT. This underlines the need for adequate and

[1] The first edition of what is now The Oxford Immigration Law Handbook (Phelan) published on 1 Dec.1997 contained 562 pages covering Statutes since 1971, Statutory Instruments, the then current Immigration Rules, and some international instruments. The current 2023 11th edition runs to 2368 pages using a larger page format and a smaller typeface. Needless to say, the extent of case law has also considerably increased.

effective mentoring of adjudicators. The consultation paper refers to oversight by senior management to "quality assure" legal decision writing. What experience of the immigration and asylum world and what legal experience would such senior management have? The presence of Home Office managers would jeopardise the independence of the IAB. Independence was one of the factors in play when the original adjudicator service was transferred from the Home Office to the MoJ. The call on management time in the early days of the IAB would likely be very substantial.

Case management models

Question 18 Are there any circumstances in which certain case types should have specialist process? If so, what specialist process or hearing models would be appropriate for these case types? Please explain.

The F-tT is considered to be a specialist tribunal and if the IAB is to take over the appeal process up to the level of the Upper Tribunal there is little reason to think that the IAB will not similarly be expected to become a specialist appeal body, as, indeed, the consultation appears to envisage.

The possibility of board style hearings in some appeals would be sensible, where the issues are complex or multiple cases raise similar issues or a case or an appellant has a prominent profile or might be politically or socially sensitive. Such cases should be capable of identification as they make their way through the IAB's case management process.

Whether any more formal "board structure" for case management up to substantive hearing would be necessary is questionable. It would increase management time and costs and arguably erode the independence of the adjudicators hearing the case. They should be capable of knowing when to bring a case on an informal basis to senior management or to the sources of "specialist legal advice" for advice or consultation. That said, there should be budgetary provision for management and legal advisors to have adequate time to be readily available to adjudicators, at short notice if necessary. This would be part of the IAB's mentoring and quality assurance obligations.

Very broadly speaking, protection appeals focus on fact-finding in respect of the appellant's claim and the background evidence while immigration appeals require, as a preliminary and in practice before the facts are found, a full understanding of the relevant immigration rules which, subsequent to *R (Alvi) v SSHD* [2012] UKSC 33, have become much longer, more detailed and more difficult to understand as remarked upon by the Court of Appeal on several occasions. The different types of appeal call for skill sets which emphasise different skills of the skill mix adjudicators will need to acquire.

It is important that adjudicators hear a variety of different appeals to avoid boredom and cynicism from becoming case hardened. A diet of only protection appeals also may likely increase the risk of

vicarious trauma/PTSD and burn-out. Variety would also help an adjudicator maintain the extended skill set which the work will require. Specialisation in a particular type of appeal for a limited period might be useful, for instance to expedite the acquisition of knowledge about a new set of circumstances likely to produce a fresh flow of appeals, such as a change of regime in a particular country or to acquire expertise in the application of new law to pass on to fellow adjudicators. The importation of Upper Tribunal judges who may sit in the F-tT, to sit in the IAB would raise questions of constitutional impropriety and independence for each side.

Question 19 What additional decision-making safeguards should the new Independent Appeals Body adopt to ensure consistency, quality and fairness?

The best safeguards are pre-emptive and are to be found in training, mentoring and the development of a "corporate memory" in the IAB and a real corporate ethos of commitment to maintaining quality and fairness in an environment of collegiality and a professional commitment to maintaining professional skills, high standards, knowledge and expertise. All these will aid consistency. Mentoring will be a key element, and sufficient provision in terms of time and budget will need to be given to this for it to be effective. Initially, it might be requisite for each decision to be discussed with senior management or a legal expert, which, unavoidably, will have its own costs.

Crucially, any attempt to go beyond genuine mentoring will risk being perceived as a challenge to the independence of the IAB. Independence from the Home Office is only one aspect. Another is that the individual adjudicators should also be and be seen as independent decision-makers, and not simply as the appliers or enforcers of a policy framed by a government department. A failure to recognise this might be considered a breach of the principles of natural justice. Additionally, both a too rigid application of "safe-guarding" and an insufficient range of adjudicator discretion will militate against the proper assessment of proportionality in individual cases.

Hearing methods, digital processes and efficiency

Question 20 What are the challenges and opportunities for paper-based hearings?

At present paper-based hearings require the agreement of both parties. Imposing a paper hearing will likely be seen as a breach of natural justice – audi alteram partem. There is a considerable body of anecdotal evidence that when credibility has to be assessed, even virtual hearings are substantially less effective than in-person hearings.

Limiting face-to face hearings to evidence sessions might appear cost-effective but lawyers for both parties are likely to prefer to make submissions immediately after the evidence while the case is fresh in their minds and in the mind of the IAB adjudicator. Drafting written submissions would take them considerably longer and would mean the adjudicator would not be ready to write

a decision until some material time after the hearing when memory of it will be less reliable. This would likely have the effect of postponing promulgation of the decision by 4-6 weeks.

Appellants should not be required to file submissions until they have seen those of the SSHD.

Question 21 What are the challenges and opportunities for virtual hearings?

Where an appellant is represented, it is possible that hearings where no evidence is given could be adequately conducted as virtual hearings. Parties to the appeal should agree before the hearing whether live evidence is required and if it is not, they should explain why the appeal should not be heard virtually. Hearings when live evidence is taken should be in-person with exceptions for witnesses who cannot be expected to attend court for reasons, such as health or mobility and witnesses whose written testimony is accepted by both parties.

Unrepresented appellants and their witnesses should be required to attend in person at every hearing. There are many cases where an unrepresented appellant attempts to attend a virtual hearing on the mobile phone outside their home because they need some privacy which is not available in shared accommodation. The WiFi connection is often poor and of an inferior quality because they use a cheap supplier and the weather may be poor. If the IAB will not have hearing centres then in-person hearings in rented rooms would likely be more satisfactory and effective than virtual hearings. The efficiency and quality of any interpretation is often substantially impaired when an interpreter appears remotely.

Virtual hearings depend on the quality of the IT equipment used, including the size of the screen, the ability of every participating individual to use adequately the IT equipment available to them, and the quality of the WiFi connection. The greater the number of participants (including members of the public, assuming hearings will be in public) the greater the risk of poor connectivity. Individuals appearing from home may not have access to or be able to afford a service of sufficient quality or speed.

Question 22 What are the challenges and opportunities for in-person hearings?

There is a considerable body of anecdotal evidence that in-person hearings are the optimum format. It facilitates discussions between the parties, the appellant's lawyer taking instructions and better guarantees the security of the hearing (for example, the appellant not being aided when testifying and not being in earshot if the adjudicator wishes to address the lawyers in private). It also reduces the difficulties of dealing with documentation which is incomplete or not bundled in the same order. The time taken for a virtual hearing is often materially longer than for an in-person hearing because many questions and answers are not heard clearly by all the parties and have to be repeated and/or there are technological (IT, WiFi) related issues that can crop up at any point during virtual hearings. In-person hearings also afford the flexibility of hearing another case in the interim if the appellant requires time for any reason (for example, chasing up a document or a witness).

In-person hearings with the interpreter present provide the optimum conditions for an interpreter to provide an efficient and reliable service. The actual presence of an interpreter when the appellant or another witness is a vulnerable person, as many are, often has a calming effect and increases the prospect of the interpreter catching any incomplete sentences said by the witness or testimony given in a quiet voice because of, for instance past trauma, shame or embarrassment.

Question 23 What technology, infrastructure or operational measures are required to ensure that remote or hybrid (a mix of remote and in-person) hearings are fair, accessible and secure?

Really good quality equipment with top quality secure WiFi connections and fast speeds should be made available with the presence of fully trained IT specialists to operate it and speedily resolve problems as and when they arise.

Arrangements should be made with all prisons and detention centres so that detained bail applicants and appellants are produced on time as a matter of priority with their documents and the IT equipment where they are is of good quality and fully functional. There should be adequate liaison between the IAB and places of detention so that enough time is allowed for any remote hearings and there is no double booking of hearing rooms at the place of detention.

Question 24 What considerations should inform decisions regarding how and where appeals are heard in the new Independent Appeals Body, including alternatives to the existing appeals estate (buildings and locations) and other spaces?

Initially the F-tT estate is unlikely to be available as it continues to deal with existing appeals. It has an outstanding backlog, estimated to be close to 24 months'[2] worth of work. IAB hearing locations should be in or around major conurbations where there are substantial migrant populations or detention centres and readily accessible by public transport. Hotel bedrooms should be considered as wholly inappropriate and unacceptable.

It will be necessary to have venues with facilities for those held in immigration detention and also those who are criminally detained in the case of deportation appeals of appellants still in custody and also arrangement for such appellants to be brought to the hearing and returned to detention. Some closed court houses might be suitable but may not be in suitable locations. Substantive hearings at places of detention would not be appropriate or desirable for lack of appearance of independence and taking into account that some appellants will have suffered trauma/torture in places of detention in their home state. Additionally, if the hearing venues were in remote locations it might be difficult to recruit staff to run them or adjudicators to attend.

[2] The Tribunal Statistics Quarterly for Oct-Dec 2025 shows an 86% increase the F-tT's open case-load despite a slightly increased disposal rate. It shows disposals in the quarter of 17K-18K and receipts of about 37,500. Annualised these show figures of 70k disposals and 148,000 receipts.

Compliance, engagement, timeframes and prioritisation

Question 25 What measures could improve compliance with directions and timeframes, and support effective engagement and attendance from appellants, representatives and the Home Office throughout the appeals process?

In our experience, which is both considerable, spanning over many years, and recent, the Home Office is frequently the principal driver of delay, including at the appeal stage. Notwithstanding comments in *Cancino* [2015] UKFTT 59(IAC), the Home Office appears to have adopted the practice of not reviewing an appeal until it prepares its bundle, regardless of any intervening developments or correspondence and thereafter, it does not always conduct a meaningful review on service of the appellant's bundle.

Presenting Officers should be given sufficient time ahead of the hearing to review the appeal (not on the day or evening before the hearing). This is in addition to the compulsory Home Office review that has been built into the appeal process to help towards a more efficient and time effective hearing, which in turn should assist the adjudicator with the preparation of a written decision. Restoring a measure of discretion to Presenting Officers on the day of the hearing would have a not dissimilar effect, which is assisting the F-tT/IAB to decide appeals fairly and justly.

The Competent Authority ("CA") to which, admittedly, a reference might be made late in the course of the appeal, should be capable of producing both reasonable grounds and positive grounds decisions in less time than it currently takes and their decisions should be filed with the relevant memorandum in each case. Absence of the CA's decisions is frequently used a means to delay a hearing although there is no legal reason why this would justify an adjournment but the failure of the CA (part of the Home Office) to deal efficiently with this part of the process tends to act as a brake on the appeal process.

In some cases, for example when members of the same family make separate and differently timed applications or appeals, the Home Office appears to put one case "on hold" to await a decision on the other appeal. While such appeals may be limited in number, the extent of the delay so caused can be very substantial, on occasion running into a year or more.

Question 26 What should constitute a reasonable timeframe for deciding cases?

There should be a series of separate timeframes for each stage of deciding cases. Key stages are:

- the substantive interview
- the initial decision
- the filing of the Home Office' bundle
- the filing of the appellant's bundle
- the filing of the Home Office's response to the appellant's evidence

Four of these five stages are in the control of the Home Office.

In cases from states which have a "high grant rate", where the real issue is the appellant's credibility, it would save time if the Home Office conceded that credibility is the sole issue and any appeal hearing and decision could be correspondingly limited.

Once there is a final decision from the F-tT or, if appealed, the UT, the Home Office has not taken a sufficiently pro-active approach to implementing tribunal's decision.

Question 27 In what circumstances should exceptions be permitted?

It would likely not be practicable to devise a comprehensive set of exceptions to any rules laying down time-limits. To limit the exercise of discretion in extending time-limits would open the path to the IAB and its process being criticised and inviting litigation. The IAB will need sufficient flexibility to deal fairly with the uncertainties and chances which beset life and cause time-limits to be missed. Too rigid a system would likely result in more delays and costs than devising a system with an in-built flexibility. A more appropriate time to address this issue in detail would be once draft procedure rules for the IAB are put out for consultation.

Question 28 What changes to the current system will ensure appeals are decided within a single appeal route?

What is meant by a single appeal route? The proposed system is that there may be a right of appeal to the IAB and then to the UT and onwards through the Courts. This would not appear to be a "single appeal" route. Any attempt to prevent judicial review applications is likely to be ineffective on constitutional and common law grounds.

Every provision to keep any part of the appeal system within the Home Office and rules devised by the Home Office will likely reduce the perceived and actual independence of the IAB.

Question 29 How should the new Independent Appeals Body prioritise or accelerate cases, and should it adopt a more codified approach to case management than exists in the current FTT-IAC? You mya wish to comment on whether certain categories of cases might be appropriately prioritized or accelerated, and what safeguards, fairness considerations, or operational factors should be taken into account, and on reasonable timeframes for doing so.

Immigration and asylum appeals are brought by individuals each of whom has a unique and personal history, some of whom in protection appeals may be traumatised on account of the persecution they have suffered. This militates against an appeal process which is too rigid and unable adequately to adapt to or accommodate such persons and circumstances who should be given a prompt decision. Those who are not entitled should also receive a prompt decision to

assist their early removal. International surrogate protection cases should also be processed within a reasonable timeframe, having due regard to the circumstances which those who eventually succeed on appeal may well have suffered in their states of origin.

Out of country (OoC) cases are generally time sensitive, linked to the reason for the visa application. Consequently, there is good reason for these applications to be dealt with in a timely manner. The ill-will towards the UK generated by the slow processing of many visa applications, especially those which are fully documented from the outset, cannot be denied. This applies to both visit visas applications which cannot proceed to appeal and others to which there may be a right of appeal. The availability of expedition on payment of additional fees is no real response: an efficient system should be in place in any event on the basis of the current fees payable.

Generally, the background for applications for leave to enter or remain is founded on an applicant's life-determining or changing decision to come to or remain in the UK or the UK's decision to expel an individual. The whole process, especially the adversarial nature of any appeal, which deals with such applications should be sensitive to this context. While there may be merit in digitilising and streamlining the processing of the documentation, any straitjacketing of the IAB's substantive treatment of an appeal will likely not be effective, as witness the numerous attempts by governments of different colours over the last decade and a half or more to 'improve' the system.

Appeal to the F-tT or the IAB is a comparatively small and discrete part of the immigration and asylum process. The IAB will need to duplicate, at a considerable cost to the public purse, much of the existing F-tT process, such as the development of an IT system, the creation of an estate, the making of procedural rules, the appointment and training of adjudicators, many of whom will have to learn new skills, of adjudication, trans-cultural understanding, holding a hearing and writing reasoned decisions which do not or are unlikely to contain arguable errors of law. Additionally, the new IAB will have to develop its own ethos and culture. All of this is already available within the F-tT and it is unclear what actual difference the new IAB as a body will make to dealing with appeals.

As already mentioned, the Home Office is in a position at most stages to make the running or drive forward an application and thereafter an appeal. There are serious questions to be asked whether creating an entirely new IAB to replace the F-tT would be worthwhile exercise, especially considering the expense of time and money. It should be noted that since onward appeal would be to the UT and the Courts, the Court of Appeal would in practice have to consider the format and content of the IAB's decisions to be adequate and sufficient.

There is a case that improvements to the Home Office processing of applications and handling of appeals would go some material way to reducing the delays and costs of the appeal process. The operation and management by the Home Office of the IAB, as a standalone body, might prove more costly to the taxpayer than the continued operation and management of the F-tT by the MoJ alongside all the other tribunals in the Tribunal Service, having the benefits and economies of scale.

Focusing on improving the existing system, including the F-tT, and making it work more efficiently and effectively might on reflection be a better and more cost effective approach which is less likely to run the risk of serious failure, wasting valuable resources.

Accountability, transparency and oversight

Question 30 What mechanisms should be in place to ensure accountability the new appeals body?

Professionally, the adjudicators and the IAB will be accountable to the UT, being the proposed body for onward appeals and presumably for any judicial review applications. It is said the IAB will be independent but part of the Home Office, which is a party to all appeals, other than age assessment appeals. Consequently, any accountability to the Home Office which it is assumed will be funding the IAB will reduce both the reality and its perception by users and the public of the IAB as an independent body. This is not a serious issue for the F-tT which is part of the much larger and more extensive Courts and Tribunals system which in turn is part of the MoJ which is not commonly a party to litigation in the Courts and Tribunals system. In addition, the Judiciary are constitutionally bound to be independent, fair and impartial and are led by the Chief Justice who embodies these constitutional requirements. The Home Secretary is a Minister of State whose duty is to her office and the government of the day. The Civil Service Code requires civil servants who will include IAB adjudicators to serve the government of the day and to retain the confidence of ministers. This is inimical to the possibility of the IAB and its adjudicators being considered to be truly independent. The aim in section 3 of the Policy paper to introduce a "single appeal route" without properly stating what it would look like appears to suggest that applications and appeals should be "seamlessly" managed within the Home Office. The Policy paper notes that in Denmark immigration appeals are to a "**separate judicial system**" (emphasis added) not to an independent body within the same government department which deals with all immigration and asylum matters.

Question 31 What mechanisms should be in place to ensure transparency of the new appeals body?

As an independent body the IAB should publish its own annual report and audited accounts.

There should be open competitions run by an independent body (not the IAB nor the Home Office) for the appointment of adjudicators and the selection criteria for adjudicators should be public and also a report on each competition and its results in much the same way as the Judicial Appointments Commission does. This would be part of establishing a perception of independence and should avoid the concerns which were very publicly voiced in the 1990s about appointments to the Canadian Immigration and Refugee Board: see International Journal of Refugee Law Vol.20

Issue 1 pp.50-122 and the 20th Report of the Standing Committee on Citizenship and Immigration of the Canadian House of Commons Sept.2018.

The IAB should also publish its own hearing procedure rules and practices. Hearings should be recorded and available or transcribed for public inspection. The IAB should report its decisions, certainly where the appeal has a high public profile because of media interest or because of the personalities involved as well as decisions of interest from a legal or evidential point of view; although whether every decision should be reported might arguably not be necessary or in the public interest but they should be accessible.

Question 32 What mechanisms should be in place for effective oversight of the new appeals body? Please include in your response whether you consider it should be subject to a regulator or an ombudsman

An Ombudsman generally deals with specific individual complaints although their response may come only after a consideration of a substantial part of the operational model of the relevant institution. Their function is re-active to a complaint or a reference. A regulator's function is more pro-active and requires a continuing conversation with the body it regulates. It is not just adjudicators against whom complaints might be made which would concern the regulator but also how the administration manage and run the IAB and maintain its independence. The Regulator itself would need to be genuinely independent of the IAB and the Home Office.

The Canadian Immigration and Refugee Board is a federal government department. It has experienced problems over the appointment of members (adjudicators) and over complaints made against them: see the 2018 Report already mentioned. This report is a clear indicator of some of the problems which the IAB as part of the Home Office, even if independent, is likely to wish to avoid.

In conclusion, Asylum Aid strongly opposes the proposed IAB. These reforms risk undermining access to justice, decision-making quality, and judicial independence, with serious implications for the rule of law. In the absence of clear evidence of benefit, we urge the Government to withdraw or fundamentally reconsider these proposals.

We would be happy to discuss any of the above or suggestions for improvement in more detail.

Yours faithfully,

Asylum Aid

ASYLUM AID